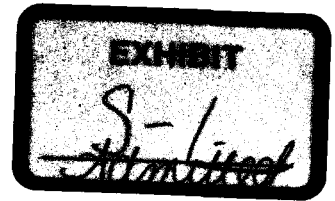




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LEGAL

MEMORANDUM



TO: Docket Control
FROM: Ernest G. Johnson *E.G.J.*
Director
Utilities Division

DATE: August 20, 2004

RE: STAFF REPORT FOR RED ROCK UTILITIES, L.L.C., APPLICATION FOR A
CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE WATER
AND WASTEWATER SERVICE TO A PORTION OF PINAL COUNTY (DOCKET
NO. WS-04245A-04-0184)

Attached is the Staff Report for Red Rock Utilities, L.L.C., application for a Certificate of Convenience and Necessity ("CC&N") in Pinal County. Staff recommends the Commission approve the application for a CC&N with conditions.

EGJ:JEF:lhv

Originator: Jim Fisher

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Arizona Corporation Commission

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SEP 17 2004

DOCKETED BY	<i>[Signature]</i>
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Docket No. WS-04245A-04-0184

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**STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION**

RED ROCK UTILITIES, L.L.C.

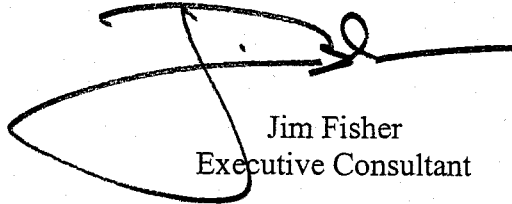
DOCKET NO. WS-04245A-04- 0184

**APPLICATION FOR A
CERTIFICATE OF CONVENIENCE
AND NECESSITY**

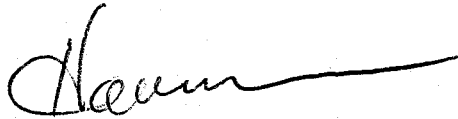
AUGUST 2004

STAFF ACKNOWLEDGMENT

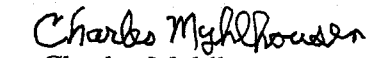
The Staff Report for Red Rock Utilities, L.L.C. (Docket No. WS-04245A-04-0184) was the responsibility of the Staff members signed below. Jim Fisher was responsible for the review and analysis of the Company's application. Lyndon Hammon was responsible for the engineering and technical analysis. Charles Myhlhousen was responsible for the review and recommendation on rate base and usage rates.



Jim Fisher
Executive Consultant



Lyndon Hammon
Utilities Engineer



Charles Myhlhousen
Charles Myhlhousen
Public Utilities Analyst II

**EXECUTIVE SUMMARY
RED ROCK UTILITIES, L.L.C.
APPLICATION FOR A CC&N
DOCKET NO. W-04245A-04-0184**

On March 10, 2004, Red Rock Utilities, L.L.C. ("Red Rock" or "Company") filed an Application for a Certificate of Convenience and Necessity ("CC&N") with the Arizona Corporation Commission ("ACC" or "Commission"). On June 4, 2004, Staff informed Red Rock that the application was sufficient for administrative purposes.

Red Rock is an Arizona Limited Liability Company ("L.L.C.") in good standing with the Commission's Corporation Division. Diamond Ventures, Inc., is the Company's sole member. Mr. Donald Diamond is the majority shareholder of Diamond Ventures, Inc. Mr. Diamond is also the majority shareholder of Spanish Trail Water Company and Saguaro Water Company. Both utilities are in regulatory compliance.

Red Rock is formed to serve Red Rock Village, a planned mix use community located in southern Pinal County approximately thirteen miles north of Marana, five (5) miles north of the Pima County line on Interstate 10. Red Rock Village has obtained Pinal County zoning for the Planned Area Development. The development is intended to include approximately 3,808 dwelling units on 1,292 acres. Development is planned in six (6) phases.

Staff recommends that the Commission approve the Red Rock Utilities L.L.C. application for a Certificate of Convenience and Necessity in a portion of Pinal County to provide water and wastewater service, subject to compliance with the following conditions:

Water

1. That the Commission find that the Red Rock Utilities, L.L.C. fair value of property devoted to water service is \$1,498,335.
2. That the Commission authorize Red Rock Utilities, L.L.C. the water rates and charges shown on Schedule CRM-W-4.
3. That the Commission require Red Rock Utilities, L.L.C. to docket a tariff consistent with the rates and charges authorized by the Commission within 30 days of the decision in this matter.
4. That the Commission require Red Rock Utilities, L.L.C. to docket a backflow prevention and curtailment tariff in Docket Control within 60 days of any decision in this matter.
5. That the Commission require Red Rock Utilities, L.L.C. to file a rate application no later than three months following the fifth anniversary of any decision in this matter.

6. That the Commission require Red Rock Utilities L.L.C. to docket a copy of the Arizona Department of Environmental Quality's ("ADEQ") Approval to Construct in Docket Control within 12 months of any decision in this matter.
7. That the Commission requires Red Rock Utilities L.L.C. to docket a report on the arsenic levels of the production wells in Docket Control within 365 days of any decision in this matter.
8. That the Commission require Red Rock Utilities, L.L.C., to docket a copy of the developer's Certificate of Assured Water Supply for the requested area, within 24 months of any decision in this matter where applicable or when required by statute.
9. That the Commission require Red Rock Utilities, L.L.C. to maintain its books and records in accordance with the NARUC Uniform System of Accounts for Water Utilities.
10. That the Commission require Red Rock Utilities, L.L.C. to notify the Director of the Utilities Division within 30 days of initiating service to customers in the proposed service area.
11. That the Commission authorize Red Rock Utilities, L.L.C. to use the depreciation rates as filed.
12. That the Commission deny Red Rock Utilities, L.L.C. request for Hook-up Fees.

Staff further recommends that the Commission's Decision granting this Certificate of Convenience and Necessity to the Red Rock Utilities, L.L.C., be considered null and void without further order from the Commission should Red Rock Utilities, L.L.C., fail to meet conditions 3, 4, 6 and 7 within the time specified.

Wastewater

Staff recommends that the Commission approve Red Rock Utilities, L.L.C.'s application for a Certificate of Convenience and Necessity to provide wastewater services, subject to the following conditions:

1. That the Commission find that Red Rock Utilities, L.L.C.'s fair value of the property devoted to wastewater service is \$4,657,304.
2. That the Commission authorize Red Rock Utilities, L.L.C. the wastewater rates and charges shown on Schedule CRM-WW-4.
3. That the Commission require Red Rock Utilities, L.L.C. to docket a tariff consistent with the rates and charges authorized by the Commission in Docket Control within 30 days of the decision in this matter.

4. That the Commission require Red Rock Utilities L.L.C. to docket a copy of the ADEQ Aquifer Protection Permit in Docket Control within 24 months of any decision in this matter.
5. That the Commission require Red Rock Utilities, L.L.C. to file a rate application no later than three months following the fifth anniversary of any decision in this matter.
6. That the Commission require Red Rock Utilities, L.L.C. to maintain its books and records in accordance with the NARUC Uniform System of Accounts for Water Utilities.
7. That the Commission require Red Rock Utilities, L.L.C. to notify the Director of the Utilities Division within 30 days of initiating service to customers in the proposed service area.
8. That the Commission authorize Red Rock Utilities, L.L.C. to use the depreciation rates as filed.
9. That the Commission deny Red Rock Utilities, L.L.C. request for Hook-up Fees.

Staff further recommends that the Commission's Decision granting this Certificate of Convenience and Necessity to Red Rock Utilities, L.L.C. be considered null and void without further order from the Commission should Red Rock Utilities, L.L.C. fail to meet conditions 3 and 4 within the time specified.

Staff further recommends that the Commission cancel the Certificate of Convenience and Necessity issued to Red Rock Water Company in Decision No. 41719.

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Introduction

On March 10, 2004, Red Rock Utilities, L.L.C. ("Red Rock" or "Company") filed an Application for a Certificate of Convenience and Necessity ("CC&N") with the Arizona Corporation Commission ("ACC" or "Commission"). On April 8, 2004, the Commission's Utilities Division Staff ("Staff") informed Red Rock that the application was insufficient for administrative purposes.

On April 1, April 12, and April 26, 2004, the Company provided additional information to support the application. On June 4, 2004, Staff informed Red Rock that the application was sufficient for administrative purposes.

Background

Red Rock is an Arizona Limited Liability Company ("L.L.C.") in good standing with the Commission's Corporation Division. Diamond Ventures, Inc. is the Company's sole member. Mr. Donald Diamond is the majority shareholder of Diamond Ventures, Inc. Mr. Diamond is also the majority shareholder of Spanish Trail Water Company and Saguaro Water Company. Both utilities are in regulatory compliance.

Red Rock is formed to serve Red Rock Village, a planned mix use community located in southern Pinal County approximately thirteen miles north of Marana, five (5) miles north of the Pima County line on Interstate 10. The proposed development includes property on the east and west of the Interstate. The developer anticipates the project being fully developed over a twenty (20) year period.

Red Rock Village has obtained Pinal County zoning for the Planned Area Development. To the east of the Interstate, the development will include commercial and industrial uses. On the west of the Interstate, Red Rock Village will be a mixed use of medium density single family residential, commercial, manufactured housing, recreational vehicle sites schools, parks and other amenities. The development is intended to include approximately 3,808 dwelling units on 1,292 acres. Development is planned in six (6) phases.

Red Rock Water Company

Red Rock is requesting a CC&N of which a portion was previously certified to Red Rock Water Company in Decision No. 41719, (November 19, 1971). On April 6, 2004, Red Rock filed a Motion to Dissolve the Red Rock Water Company CC&N. The Motion to Dissolve provided affidavits of prior corporate officers asserting that the corporation was defunct, it has no assets, the county franchise had lapsed, it withdraws no water, and offers no service to the public.

Mr. Thomas Knapp, as President of Red Rock Water Company, signed a October 22, 2002, Assignment and Transfer of the service area and service area rights.

Red Rock Water Company is no longer acting as a public service company. It is not offering service to the public and it is not current in its regulatory filings. Red Rock Water Company's CC&N should be cancelled to ensure Commission records are clear on the authorized utility for this area.

Water System

Red Rock commissioned the Tucson consulting firm of The WLB Group to develop a water system master plan. The WLB Group has expertise in engineering, subdivision planning and urban design. The resulting master plan for Red Rock is professional and comprehensive. The master plan estimated water demand from all six phases through build-out, including peak day, peak hour, and fire flow. General design parameters for the wells, water storage, major water transmission mains, and pressure zone boundaries were delineated.

Additionally, the engineering firm of Westland Resources performed a preliminary hydrological investigation of the potential water quantity and quality. The engineering firm reported that water production wells could likely be developed which would not exceed the maximum contaminant levels of the safe Drinking Water Act and which should provide at least 700 gallons per minute per well. Based on this detailed planning information, Staff concludes that the Company can develop and construct adequate water storage and production to serve its anticipated customer base.

Arizona Department of Environmental Quality ("ADEQ") Capacity Development

ADEQ Capacity Development rules, effective September 23, 1999, require new public drinking water systems to meet distinct financial, managerial and technical capacity requirements. ADEQ will accept a financial determination made by this Commission as meeting the financial capacity requirements for new water systems under the jurisdiction of the Commission. The technical and managerial capability is determined by ADEQ.

All three components are combined in the final approval of the water company's "elementary business plan", pursuant to ADEQ Rule R18-4-606. The three components are reviewed and approved sequentially, with the technical capacity approval and "Approval To Construct" being the last performed. The Approval to Construct acts as a control point in the process, and once an Approval to Construct has been issued, it can be assumed that the water company has complied with the capacity development rules.

Based on the above criteria, it is Staff's recommendation that Red Rock be required to submit a copy of the initial ADEQ "Approval to Construct" to the Director of Utilities, Arizona Corporation Commission, within 12 months of the effective date of the final decision and order in this matter.

Arsenic

The U. S. Environmental Protection Agency ("EPA") has reduced the arsenic maximum contaminant level ("MCL") in drinking water from 50 micrograms per liter (" $\mu\text{g/l}$ ") to 10 $\mu\text{g/l}$. The date for compliance with the new MCL is January 23, 2006.

Red Rock's production sources have not been established; however, conditions indicate the expected arsenic level will not exceed 10 parts per billion ("ppb"), therefore, it appears the Company will be in compliance with the new arsenic standard.

Staff recommends that the Company be required to file a report on the actual arsenic levels of its production wells within 365 days of any decision in this matter.

Arizona Department of Water Resources ("ADWR") Compliance

The Company will be located within the Tucson Active Management Area and will be subject to reporting and conservation requirements.

Staff recommends that the Company docket a copy of the developer's Certificate of Assured Water Supply for the requested area, where applicable or when required by statute.

Proposed Water Rates

Red Rock is requesting initial water rates of a monthly minimum of \$25.00 with a two tiered rate structure. Staff is recommending the same monthly minimum charge. Staff rates, however, reflect a three tiered plan which is designed to encourage conservation and be consistent with projected revenue levels.

Staff's proposed rates are \$2.40 per 1,000 gallons up to 5,000 gallons, increased to \$3.15 per 1,000 gallons, for usage up to 10,000 gallons and \$3.90 for all usage in excess of 10,000 gallons. The Company is also seeking authorization for separate irrigation rates. (See Schedule CRM-W-4 Attached) .

The Company is requesting Hook-up Fees designed to fund a portion of the offsite water infrastructure. Consistent with Commission policy, Staff does not recommend approval of the Hook-up fee for a new utility.

The application contains pro forma revenues and expenses. Staff believes the projected expenses appear reasonable. The Company estimates water revenue of \$75,236 with associated expenses \$92,887 resulting in an operating loss of \$17,651 for the first year of operations. The Company estimates \$389,830 in third year revenue, associated expenses of \$298,303 resulting in an operating income of \$91,048 for the year. The Company estimates \$682,204 in fifth year revenue, with related expenses of \$491,926, resulting in projected operating income of \$190,278 or the year. (See Schedule CRM-W-3, attached)

Special Service Tariffs

A "Curtailment Plan Tariff" is an effective tool to allow a water company to manage its resources during periods of water shortages due to pump breakdowns, droughts, or other unforeseeable events. A "Cross Connection/Backflow Tariff" gives a private water utility the means and authority to implement a cross connection program as required by Arizona Revised Statutes and Administrative Codes. The cross connection tariff provides for the installation and testing of backflow devices and provides for corrective actions where cross connection hazards exist. Since Red Rock Utility does not yet have either a curtailment tariff or cross connection tariff, this CC&N application provides an opportune time to prepare and file such tariffs.

Therefore, Staff recommends that the Company docket a curtailment tariff and a cross connection tariff within 60 days after the effective date of any decision and order pursuant to this application. The tariffs shall be submitted to the Director of Utilities Division for his review and certification. Staff also recommends that the tariffs shall generally conform to the sample tariffs found posted on the Commission's web site (www.cc.state.az.us/utility/water/forms.htm) or available upon request from Commission Staff.

Section 208 Plan Approval

The Federal Water Pollution Control Act as amended by the Water Quality Act of 1987 ("Clean Water Act") is a commitment by the federal government to the elimination of pollution in the nation's waters. Each state is required, under Section 208 of the Clean Water Act, to develop and implement area-wide water quality management plans for pollution control.

In Arizona, six (6) Councils of Government, ("COGs") have been designated by the Governor as "Water Quality Management Planning Agencies" under Section 208, of the Clean Water Act. The Central Arizona Associations of Governments ("CAAG") is designated by the Governor and the EPA as the area wide water quality management planning agency for Pinal County.

The guidelines for 208 planning set forth in the Clean Water Act are fairly broad so that the various water quality issues in different areas of the nation can be addressed appropriately. Each 208 Plan must identify the water quality management needs in its planning area and provide a program to develop solutions. The CAAG 208 planning process is an ongoing effort in response to changing water resource issues, regulations, treatment technologies and changing demographics.

On the federal level, the Environmental Protection Agency ("EPA") has the responsibility of overseeing the planning efforts necessary to meet the specific requirements of Section 208. ADEQ administers both the basin-wide planning and water quality monitoring programs. In addition, ADEQ is responsible for reviewing and enforcing water quality standards for the State. For the CAAG 208 Program, the EPA and ADEQ provides guidance in the terms of policy,

procedure and review of documents to assure adherence to the requirements of the Clean Water Act.

A major effort of the 208 Plan is the Point Source Plan. Point Source Planning is primarily directed at compiling the preferred wastewater collection and treatment system for the affected area through the year 2020. Toward that end, the Point Source Plan examines population and wastewater flow projections, wastewater treatment plant siting, treatment methods, effluent disposal, reclaimed water reuse and sludge management.

ADEQ Permits

The objective of a Point Source Plan is to identify the preferred wastewater collection and treatment and effluent reuse or disposal systems for the affected area. The regulatory framework for management of water quality is comprised of permit compliance and monitoring of protected uses. The ADEQ defines, monitors and enforces water quality standards for protected uses of surface waters, aquifers and public water supplies. The ADEQ permit framework for point source management consists of three primary elements consisting of the Arizona Pollutant Discharge Elimination System ("AZPDES") the Aquifer Protection Permit ("APP") and the reclaimed water reuse permit program.

The purpose of the AZPDES permit programs is to regulate the quality of point source discharges into the waters of the nation. Based on specific criteria, discharges to rivers, tributaries to the rivers, dry washes and various lakes and canals within the affected area are subject to the AZPDES permit program provisions.

The ADEQ has established Surface Water Quality Standards ("SWQS") as required to meet the goals of the federal Clean Water Act and to protect the quality of surface waters in the state. The EPA incorporates the SWQS and federal regulation related to surface water quality and effluent discharge quality into the AZPDES permits. Pollutant levels established by the AZPDES permit programs vary among wastewater reclamation facilities depending upon the designated use of reclaimed water. Permits are typically issued for a term of five years.

Aquifer Protection Permit

The APP was established by the Environmental Quality Act of 1986 and implemented by rule in 1989. The purpose of the APP program is to protect the groundwater quality and public health from potential environmental risks posed by the facilities that discharge pollutants to the land surface, underlying soil, or groundwater that have a potential to reach an aquifer.

The APP permitting requirements are determined based on the type of facility or land use, capacity of the facility, and/or the type of discharges that the facility will produce. The most crucial requirements for obtaining an APP are demonstrating that the Best Available Demonstrated Control Technology ("BADCT") will be used to minimize the discharge of

pollutants, Aquifer Water Quality Standards will not be violated and that the facility processes the financial and technical capability to comply with the permit conditions.

The Environmental Quality Act requires that all domestic wastewater and disposal facilities requiring an APP use BADCT as part of their wastewater treatment process. The ADEQ adopted BADCT requirements for new sewage treatment facilities. The design review of sewage treatment facilities has been consolidated into the APP application review process. BADCT requirements are defined within the rules which require secondary treatment, removal for new facilities and expansion of existing facilities. The revision of the APP rule took effect January 2001.

The reclaimed water use permit program, established in 1985, allows the reuse of reclaimed water for a variety of applications such as agriculture, urban lakes, golf course irrigation, ponds and industrial uses. Water reclamation plants are required by rules to have a reuse permit for the release of reclaimed water for reuse purposes.

There are two main categories of reclaimed water reuse including direct non-potable reuse and indirect reuse. Direct reuse consists of irrigation and makeup water for urban lakes. Indirect reuse typically involves aquifer recharge and recovery. The indirect reuse of reclaimed water usually involves recharge to an aquifer for storage and future recovery. The reclaimed water is typically allowed to infiltrate through the dry soils above the aquifer allowing additional treatment. Recharge projects using reclaimed water are required to obtain an APP.

Red Rock Wastewater System

Wastewater collection and treatment cannot be approached in a fragmented manner. Red Rock commissioned the Tucson consulting firm of The WLB Group to develop a wastewater system master plan. The master plan identified land use, housing density, service areas, estimated sewage flows, location, capacity, and phasing of the sewage treatment plant, the alignment and size of major sewage interceptors, and the ultimate use and disposal of wastewater effluent. (An interceptor is a large diameter sewage pipe for the transport of wastewater from sewage collection areas.) The master plan was encompassing enough in scope and detail that it could also serve as the CAAG §208 plan. This Master Wastewater/ CAAG §208 Plan for Red Rock, was approved by the Arizona Department of Environmental Quality on March 22, 2004.

The Utility plans to ultimately construct a 1.5 million gallon per day ("MGD"), sequencing batch wastewater treatment facility. The treatment plant will provide tertiary treatment, with de-nitrification and disinfection. Effluent disposal will be provided by landscape irrigation of parks, riparian area, greenbelts, and other turf areas. There is a possibility that in the later stages of build-out, effluent may be generated in quantities beyond consumptive use. If that should occur, excess effluent will be discharged to an unnamed tributary to the Santa Cruz River via an Arizona Pollution Discharge Elimination Permit ("AZPDES"). Treatment levels, effluent use, and effluent disposal are all identified and approved in the CAAG §208 plan. Table II delineates the phasing of the wastewater treatment plant.

Table II
Red Rock Utilities – WWTP Phasing

Phase	Years	Dwelling units	Estimated phase flow (gal)	Design treatment capacity per phase (gal)
I	2004-2006	1,000	273,130	300,000
II	2007-2015	2,808	777,600	800,000
III	2016-2023	commercial	274,500	400,000
Totals		3,808	1,325,230	1,500,000

After considering the wastewater master plan, Staff concludes that wastewater treatment facility and its service areas are consistent with the approved §208 Areawide Management Plan and that Red Rock can design and construct adequate wastewater collection, treatment, and disposal facilities to serve the anticipated customer base.

However, it will be necessary for Red Rock to acquire an APP from the ADEQ prior to the construction and operation of the wastewater treatment facility. Therefore, Staff recommends that Red Rock submit a copy of the issued "Aquifer Protection Permit" and a copy of any other associated ADEQ unified water quality permit, within 24 months of the effective date of the opinion and order issued pursuant to this application.

Proposed Rates

Red Rock is requesting initial wastewater rates of a monthly minimum of \$39.50. The Company is also seeking authorization to charge \$300 per acre foot of treated effluent. Staff is recommending initial wastewater and effluent sale rates consistent with the Company's request. (See Schedule CRM-WW-4, attached) .

The application contains pro forma revenues and expenses, Staff believes the projected expenses appear reasonable. The Company estimates wastewater revenue of \$61,249 with associated expenses \$74,338 resulting in an operating loss of \$13,089 for the first year of operations. The Company estimates \$300,710 in third year revenue, associated expenses of \$286,595 resulting in an operating income of \$14,115 for the year. The Company estimates \$582,413 in fifth year revenue, with related expenses of \$509,859, resulting in projected operating income of \$72,554 for the year. (See Schedule CRM-WW-3, attached)

Finance of Plant

According Red Rock's application, the Company anticipates financing the water facilities with a combination of equity, advances in aid of construction, and contribution in aid of construction. The Company indicates the wastewater plant will be financed entirely with equity.

Advances in aid of construction are often in the form of Line Extension Agreements. Line Extension Agreements generally require the developer to design, construct and install (or cause to be), all facilities to provide adequate service to the development. The developer is required to pay all costs of constructing the collection facilities and common facilities necessary to serve the development. Upon acceptance of the facilities by the utility, the developer will convey the water facilities by way of a warranty deed. The utility will often refund ten (10) percent of the annual water revenue associated with development for a period of ten (10) years.

Red Rock has proposed a hook-up fee tariff, which will be used to partially fund off-site major infrastructure and which will be treated as a contribution. The amount of the hook-up fee will be proportional to the water meter size. The type of infrastructure to be funded by the hook-up fee includes wells, storage tanks, water transmission mains, wastewater treatment plants, and sewage interceptors. Staff's analysis of this fee was derived by taking the estimated growth for the first five years, and then dividing the number of lots into the costs for the first five years of off-site infrastructure. The results are summarized below in Table III.

Table III – Hook-Up Fees

	Cost of first 5 year off-site	# lots in 5 yrs	Cost of off- site (per lot)	Requested hook- up fee (per lot)	Hook-up as % of off site cost (per lot)
Water	\$3,781,863	1220	\$3,099	\$1,000	32%
Sewer	\$15,552,634	1220	\$12,748	\$2,000	15.7%

The Company has estimated a hook-up fee to capital cost ratio of 23 percent for water and 12 percent for sewer. The company's ratio is of the same magnitude of Staff's estimate, and given the vagaries of lot growth, the mix of meter sizes, and construction estimates, Staff's analysis and the Company's analysis are essentially comparable.

County Franchise

On June 5, 2003, the Pinal County Supervisors granted Red Rock a county franchise for its service area.

Wastewater Depreciation Rates

Staff has developed typical and customary depreciation rates within a range of anticipated equipment life. These rates are presented in Exhibit 3. It is recommended that the Company use depreciation rates by individual NARUC category, as delineated in Exhibit 3.

TYPICAL DEPRECIATION RATES FOR WASTEWATER COMPANIES

NARUC Account No.	Depreciable Plant	Average Service Life (Years)	Annual Accrual Rate (%)
354	Structures & Improvements	30	3.33
355	Power Generation Equipment	30	3.33
360	Collection Sewers – Force	50	2.0
361	Collection Sewers- Gravity	50	2.0
362	Special Collecting Structures	50	2.0
363	Services to Customers	50	2.0
364	Flow Measuring Devices	10	10.0
365	Flow Measuring Installations	20	5.00
366	Reuse Services	50	2.00
367	Reuse Meters and Meter Installations	30	3.33
370	Receiving Wells	30	3.33
371	Pumping Equipment	10	10.0
374	Reuse Distribution Reservoirs	40	2.50
375	Reuse Transmission and Distribution System	50	2.0
380	Treatment and Disposal Equipment	20	5.0
381	Plant Sewers	20	5.0
382	Outfall Sewer Lines	25	4.0
389	Other Plant & Miscellaneous Equipment	15	6.67
390	Office Furniture & Equipment	15	6.67
390.1	Computers & Software	5	20.0
391	Transportation Equipment	5	20.0
392	Stores Equipment	25	4.0
393	Tools, Shop & Garage Equipment	20	5.0
394	Laboratory Equipment	10	10.0
395	Power Operated Equipment	20	5.0
396	Communication Equipment	10	10.0
397	Miscellaneous Equipment	10	10.0
398	Other Tangible Plant	----	----

NOTES:

1. These depreciation rates represent average expected rates. Wastewater companies may experience different rates due to variations in construction, environment, or the physical and chemical characteristics of the water.
2. Acct. 348, Other Tangible Plant may vary from 5% to 50%. The depreciation rate would be set in accordance with the specific capital items in this account.

Staff Recommendations

Staff recommends that the Commission approve the Red Rock Utilities, L.L.C. application for a Certificate of Convenience and Necessity in a portion of Pinal County to provide water and wastewater service, subject to compliance with the following conditions:

Water

1. That the Commission find that Red Rock Utilities, L.L.C. the fair value of the property devoted to water service is \$1,498,335.
2. That the Commission authorize Red Rock Utilities, L.L.C. the water rates and charges shown on Schedule CRM-W-4.
3. That the Commission require Red Rock Utilities, L.L.C. to docket a tariff consistent with the rates and charges authorized by the Commission within 30 days of the decision in this matter.
4. That the Commission require Red Rock Utilities, L.L.C. to docket a backflow prevention and curtailment tariff in Docket Control within 365 days of any decision in this matter.
5. That the Commission require Red Rock Utilities, L.L.C. to file a rate application no later than three months following the fifth anniversary of any decision in this matter.
6. That the Commission require Red Rock Utilities, L.L.C. to docket a copy of the ADEQ Approval to Construct in Docket Control within 12 months of any decision in this matter.
7. That the Commission requires Red Rock Utilities L.L.C. to docket a report on the arsenic levels of the production wells in Docket Control within 365 days of any decision in this matter.
8. That the Commission require Red Rock Utilities, L.L.C., to docket a copy of the developer's Certificate of Assured Water Supply for the requested area, within 24 months of any decision in this matter where applicable or when required by statute.
9. That the Commission require Red Rock Utilities, L.L.C. to maintain its books and records in accordance with the NARUC Uniform System of Accounts for Water Utilities.

10. That the Commission require Red Rock Utilities, L.L.C. to notify the Director of the Utilities Division within 30 days of initiating service to customers in the proposed service area.
11. That the Commission authorize Red Rock Utilities, L.L.C. to use the depreciation rates as filed.
12. That the Commission deny Red Rock Utilities, L.L.C. request for Hook-up Fees.

Staff further recommends that the Commission's Decision granting this Certificate of Convenience and Necessity to the Red Rock Utilities, L.L.C., be considered null and void without further order from the Commission should Red Rock Utilities, L.L.C., fail to meet Conditions 3, 4, 6 and 7 within the time specified.

Wastewater

Staff recommends that the Commission approve Red Rock Utilities, L.L.C.'s application for a Certificate of Convenience and Necessity to provide wastewater services, subject to the following conditions:

1. That the Commission find that Red Rock Utilities, L.L.C. the's fair value of the property devoted to wastewater service is \$4,657,304.
2. That the Commission authorize Red Rock Utilities, L.L.C. the wastewater rates and charges shown on Schedule CRM-WW-4.
3. That the Commission require Red Rock Utilities, L.L.C. to docket a tariff consistent with the rates and charges authorized by the Commission in docket control within 30 days of the decision in this matter.
4. That the Commission require Red Rock Utilities, L.L.C. to docket a copy of the ADEQ Aquifer Protection Permit in docket control within 24 months of any decision in this matter.
5. That the Commission require Red Rock Utilities, L.L.C. to file a rate application no later than three months following the fifth anniversary of any decision in this matter.
6. That the Commission require Red Rock Utilities, L.L.C. to maintain its books and records in accordance with the NARUC Uniform System of Accounts for Water Utilities.

7. That the Commission require Red Rock Utilities, L.L.C. to notify the Director of the Utilities Division within 30 days of initiating service to customers in the proposed service area.
8. That the Commission authorize Red Rock Utilities, L.L.C. to use the depreciation rates as filed.
9. That the Commission deny Red Rock Utilities, L.L.C. request for Hook-up Fees.

Staff further recommends that the Commission's Decision granting this Certificate of Convenience and Necessity to Red Rock Utilities, L.L.C. be considered null and void without further order from the Commission should Red Rock Utilities, L.L.C. fail to meet Conditions 3 and 4 within the time specified.

Staff further recommends that the Commission cancel the CC&N of Red Rock Water Company in Decision No. 41719 (June 1971).

MEMORANDUM

DATE: 27 July 2004
TO: James E. Fisher
FROM: L. Hammon
RE: Red Rock Utilities, Limited Liability Corporation
New CC&N To Provide Water and Wastewater
Docket No. WS-04245A-04-0184

I. Introduction

Red Rock Utilities, Limited Liability Corporation (herein also "RRU" or "Company") has applied for a Certificate of Convenience and Necessity for the purpose of constructing and operating water and wastewater utilities which will serve Red Rock Village. The proposed development of Red Rock Village is within the political jurisdiction of Pinal County and is a zoned Planned Area Development (herein also "PAD") which will consist of single family residential, commercial, manufactured housing, recreational vehicle sites, schools, parks and other neighborhood amenities. Red Rock Village encompasses about 1,292 acres of undeveloped land and is located about 13 miles north of Marana on Interstate 10 at the Red Rock Exit # 266, and will surround the existing small community of Red Rock.

Red Rock Utilities' requested service area largely overlays the service area of the Red Rock Water Company. In its application Red Rock Utilities has claimed that Red Rock Water Company is defunct, has no County franchise, has no assets, and has ceased operating as a water utility. Indeed, the officers of the defunct Red Rock Water Company have executed an assignment and transfer of service rights to Red Rock Utilities and that document is included in Red Rock Utilities' application. It seems unlikely that the defunct water company could obtain the capital to construct the necessary wells and distribution mains, or have a large enough service base to become an economically viable water company. Additionally, it has been the policy of this Commission to encourage consolidation of small rural water and wastewater utilities. For these reasons, Staff supports the deletion and re-assignment of service area to Red Rock Utilities.

The Planned Area Development will be comprised of 3,808 dwelling units on 1,292 acres. Table 1 lists the types of land uses established under the provisions of the PAD. Water and wastewater demands and areas for schools, open areas parks and greenbelts are included in the gross areas listed in Table 1 below.

Table 1 – Red Rock Village
Land Use for Planned Area Development

Land Use	Density Dwellings/acre	Gross area (acres)	Dwellings
Medium Density Residential	3.10	450	1,395
Med. High Density Residential	5.10	226	1,153
Manufactured Housing	4.17	169	705
RV Home Site	5.19	107	555
Commercial		40	n/a
Industrial		300	n/a
Totals		1,292	3808

Red Rock Village will be developed in 6 phases. Phase I consists of approximately 764 residential units, a commercial parcel, and an elementary school. Phase II consists of an additional 1,235 new residential units, and a commercial parcel. Phase III consists of 960 units, a commercial parcel and possible another school site. Phase IV is entirely residential and consists of the remaining 849 units. Phase V includes 43 acres of off site adjacent land for commercial development. Phase VI includes 315 acres of commercial and industrial parcels located on the east side of Interstate 10.

II. Water

Red Rock Utilities commissioned the Tucson consulting firm of The WLB Group to develop a water system master plan. The WLB Group has expertise in engineering, subdivision planning, and urban design and the resulting master plan for Red Rock Utilities is professional and comprehensive. The master plan estimated water demand from all six phases through build-out, including peak day, peak hour, and fire flow. General design parameters for the wells, water storage, major water transmission mains, and pressure zone boundaries were delineated. Additionally, the engineering firm of Westland Resources performed a preliminary hydrological investigation of the potential water quantity and quality. They reported that wells could likely be developed which would not exceed the maximum contaminant levels of the safe Drinking Water Act and which should provide at least 700 gallons per minute per well. Based on this planning information, Engineering Staff conclude that the utility can develop and construct adequate water storage and production to serve its anticipated customer base.

III. Wastewater

Wastewater collection and treatment cannot be approached in a fragmented manner. Instead, it demands area wide planning and co-ordination between publicly owned treatment works, cities, sanitary districts, and privately owned wastewater treatment plants. Pursuant to that goal, Section 208 of the Federal Water Pollution Control Act (Public Law 92-500) provided for the preparation of "Certified Areawide Water Quality Management Plans" and the designation of entities to manage sewage treatment facilities and sewage collection systems in the respective planning area. The Central Arizona Association of Governments (CAAG) is the designated water quality planning agency for the requested Certificate of Convenience and Necessity (CC&N) areas in this application.

Red Rock Utilities again commissioned the Tucson consulting firm of The WLB Group to develop a wastewater system master plan. The master plan identified land use, housing density, service areas, estimated sewage flows, location, capacity, and phasing of the sewage treatment plant, the alignment and size of major sewage interceptors, and the ultimate use and disposal of wastewater effluent. (An interceptor is a large diameter sewage pipe for the transport of wastewater from sewage collection areas.) The master plan was encompassing enough in scope and detail that it could also serve as the CAAG §208 plan. This Master Wastewater/ CAAG §208 Plan for Red Rock Utilities, was approved by the Arizona Department of Environmental Quality on March 22, 2004.

The Utility plans to ultimately construct a 1.5 million gallon per day (MGD), sequencing batch wastewater treatment facility. The treatment plant will provide tertiary treatment, with denitrification and disinfection. Effluent disposal will be provided by landscape irrigation of parks, riparian area, greenbelts, and other turf areas. There is a possibility that in the later stages of build-out, effluent may be generated in quantities beyond consumptive use. If that should occur, excess effluent will be discharged to an unnamed tributary to the Santa Cruz River via an Arizona Pollution Discharge Elimination Permit (AZPDES). Treatment levels, effluent use, and effluent disposal are all identified and approved in the CAAG §208 plan. Table II delineates the phasing of the wastewater treatment plant.

Table II
Red Rock Utilities – WWTP Phasing

Phase	Years	Dwelling units	Estimated phase flow (gal)	Design treatment capacity per phase (gal)
I	2004-2006	1,000	273,130	300,000
II	2017-2015	2,808	777,600	800,000
III	2016-2023	commercial	274,500	400,000
Totals		3,808	1,325,230	1,500,000

ATTACHMENT A

After considering the wastewater master plan, Engineering Staff, concludes that wastewater treatment facility and its service areas are consistent with the approved §208 Areawide Management Plan and that Red Rock Utilities can design and construct adequate wastewater collection, treatment, and disposal facilities to serve the anticipated customer base.

IV. Regulatory Compliance

Since this is a proposed utility which has yet to become operational, there is no historical compliance data for Red Rock Utility from the Arizona Corporation Commission, the Arizona Department of Water Resources, or the Arizona Department of Environmental Quality (herein also "DEQ").

However, it will be necessary for RRU to acquire an "Aquifer Protection Permit" from the Arizona Department of Environmental Quality prior to the construction and operation of the wastewater treatment facility. Therefore Engineering Staff recommends that Red Rock Utility submit a copy of the issued "Aquifer Protection Permit" and a copy of any other associated DEQ unified water quality permit, within 24 months of the effective date of the opinion and order issued pursuant to this application.

Red Rock Utility is also within the Tucson Active Management Area of the Arizona Department of Water Resources. As such, each developer will be required to obtain a "Certificate of Assured Supply", or as an alternative, Red Rock Utility may obtain a "Designation of Assured Supply" from DWR for the entire development. Therefore, it is recommended that Red Rock Utility shall file with the Commission a copy of the developers' Certificate of Assured Water Supply, or as an alternative, a copy of its Designation of an Assured Supply for Red Rock Utility where applicable or when required by statute.

V. Hook Up Fees

Red Rock Utility has proposed a hook-up fee tariff, which will be used to partially fund off-site major infrastructure and which will be treated as a contribution. The amount of the hook up fee will be proportional to the water meter size. The type of infrastructure to be funded by the hook-up fee includes wells, storage tanks, water transmission mains, wastewater treatment plants, and sewage interceptors. Staff's analysis of this fee was derived by taking the estimated growth for the first five years, and then dividing those number of lots into the costs for the first 5 years of off-site infrastructure. The results are summarized below in Table III.

Table III – Hook Up Fees

	Cost of first 5 year off-site	# lots in 5 yrs	Cost of off-site (per lot)	Requested hook-up fee (per lot)	Hook-up as % of off site cost (per lot)
Water	\$3,781,863	1220	\$3,099	\$1,000	32%
Sewer	\$15,552,634	1220	\$12,748	\$2,000	15.7%

ATTACHMENT A

The Company has estimated a hook-up fee to capital cost ratio of 23% for water and 12% for sewer. The company's ratio is of the same magnitude of Staff's estimate, and given the vagaries of lot growth, the mix of meter sizes, and construction estimates, Staff's analysis and the Company's analysis are essentially comparable.

VI. Special Service Tariffs

A **"Curtailement Plan Tariff"** is an effective tool to allow a water company to manage its resources during periods of water shortages due to pump breakdowns, droughts, or other unforeseeable events. A **"Cross Connection/Backflow Tariff"** gives a private water utility the means and authority to implement a cross connection program as required by Arizona Revised Statutes and Administrative Codes. The cross connection tariff provides for the installation and testing of backflow devices and provides for corrective actions where cross connection hazards exist. Since Red Rock Utility does not yet have either a curtailment tariff or cross connection tariff, this CC&N application provides an opportune time to prepare and file such tariffs.

Therefore, Staff recommends that the Company file a curtailment tariff and a cross connection tariff within 60 days after the effective date of any decision and order pursuant to this application. The tariffs shall be submitted to the Director of Utilities Division for his review and certification. Staff also recommends that the tariffs shall generally conform to the sample tariffs found posted on the Commission's web site (www.cc.state.az.us/utility/water/forms.htm) or available upon request from Commission Staff.

VII. Recommendations

1. It is recommended that Red Rock Utility submit a copy of the issued "Aquifer Protection Permit" and a copy of any other associated DEQ unified water quality permits, within 24 months of the effective date of the opinion and order issued pursuant to this application.
2. It is recommended that Red Rock Utility shall file with the Commission a copy of the developers' Certificate of Assured Water Supply, or as an alternative, a copy of its Designation of an Assured Supply for Red Rock Utility, where applicable or when required by statute.
3. Staff recommends that the Company file a curtailment tariff and a cross connection tariff within 60 days after the effective date of any decision and order pursuant to this application. The tariffs shall be submitted to the Director of Utilities Division for his review and certification. Staff also recommends that the tariffs shall generally conform to the sample tariffs found posted on the Commission's web site (www.cc.state.az.us/utility/water/forms.htm) or available upon request from Commission Staff.

MEMORANDUM

TO: Jim Fisher
Executive Consultant II
Utilities Division

FROM: Barb Wells *lew*
Information Technology Specialist
Utilities Division

THRU: Del Smith *DS*
Engineering Supervisor
Utilities Division

DATE: August 12, 2004

RE: **RED ROCK UTILITIES, LLC (DOCKET NO. WS-04245A-04-0184)**

The area requested by Red Rock has been plotted using a revised legal description for the water CC&N, which has not yet been (but will soon be) docketed by the company. This legal description is attached and should be used in place of the original description submitted with the application. Also attached is a copy of the requested sewer CC&N area from the original application.

In addition, a copy of the map is attached for your files.

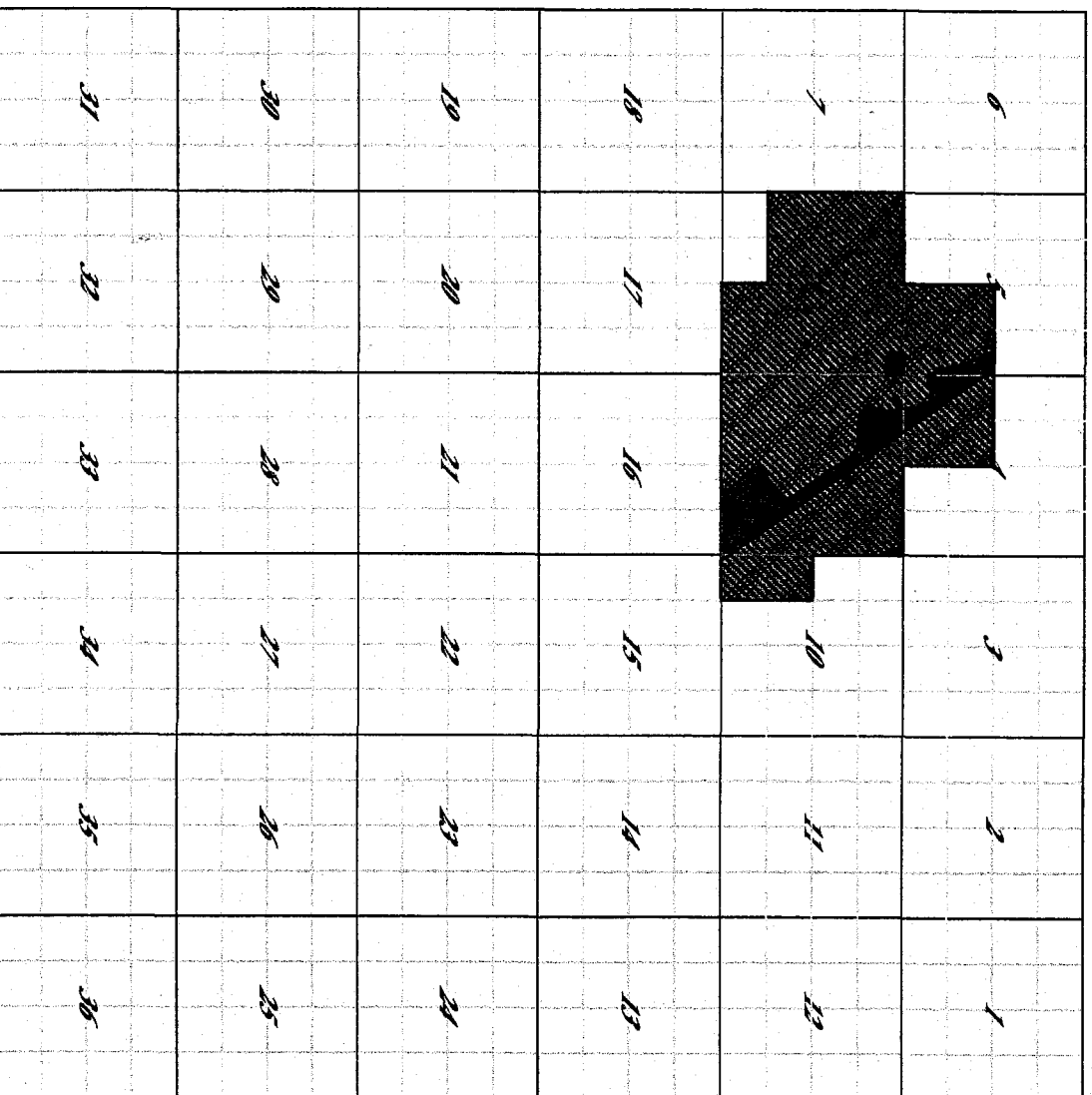
:bsw

Attachments

cc: Docket Control
Mr. Michael McNulty
Deb Person (Hand Carried)
File

COUNTY: Pinal

RANGE 10 East



TOWNSHIP 10 South

Red Rock Utilities, LLC
 Docket No. WS-4245-04-184
 Application for Water & Sewer CC&N

Revised August 11, 2004
WLB No. 100050-B005-1003X
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**LEGAL DESCRIPTION
RED ROCK UTILITIES L.L.C.
WATER C.C. & N. AREA**

Section 4:

The Southwest Quarter of Section 4, Township 10 South, Range 10 East, Gila and Salt River Meridian, Pinal County, Arizona, lying Easterly of the Easterly right-of-way line of Interstate 10 and the Union Pacific Railroad right-of-way; and

That portion of the Southwest quarter of the Southwest quarter of Section 4, Township 10 South, Range 10 East, Gila and Salt River Meridian, Pinal County, Arizona, described as follows:

BEGINNING at the Southwest corner of said Section 4;

Thence North $00^{\circ} 32'$ West, along the West boundary of said Section 4, a distance of 679.90 feet;

Thence North $76^{\circ} 49'$ East, a distance of 710.30 feet to a point on the Southwesterly boundary of that certain highway known as Interstate 10 as presently located;

Thence Southeasterly along the Southwesterly boundary of said Interstate 10 following the curves and tangents thereof, a distance of 820.00 feet, more or less, to the point of the intersection of the Southwesterly boundary of Interstate 10, with the Northerly boundary of that certain road known as Sasco Road as presently located;

Thence South $66^{\circ} 50'$ West along the Northerly boundary of Sasco Road, a distance of 185.00 feet, more or less, to the point of intersection of the Northerly boundary of Sasco Road with the South boundary of said Section 4;

Thence South $89^{\circ} 51'$ West along the South boundary of said Section 4, a distance of 810.00 feet, more or less, to the Southwest corner of said Section 4 and the POINT OF BEGINNING.

Revised August 11, 2004
WLB No. 100050-B005-1003X
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The
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Group

Section 5:

The Southeast Quarter of Section 5, Township 10 South, Range 10 East, Gila and Salt River Meridian, Pinal County, Arizona, except any portion lying within the right-of-way of Interstate 10; and

EXCEPTING that portion described as follows:

BEGINNING at the Southeast corner of said Section 5;

Thence Westerly along the Southern boundary of said Section 5, a distance of 512.29 feet;

Thence Northerly and parallel to the Eastern boundary of said Section 5, a distance of 16 feet;

Thence Easterly and parallel to the Southern boundary of said Section 5, a distance of 512.29 feet;

Thence Southerly along the Eastern boundary of said Section 5, a distance of 16 feet to the POINT OF BEGINNING;

And ALSO EXCEPTING that portion of said Southeast Quarter lying north of and easterly of the following described line;

Commencing at the ¾ inch pipe being the Southeast corner of said Section 5;

Thence North 00° 00' 00" East, along the East line of the Southeast quarter of said Section 5, a distance of 931.43 feet to the TRUE POINT OF BEGINNING, said point being 1,751.75 feet South of a 2 inch open pipe which is the East quarter corner of said Section 5;

Thence South 88° 59' 52" West, a distance of 182.65 feet;

Thence North 06° 07' 46" West, a distance of 440.59 feet;

Thence North 00° 38' 48" West, a distance of 60.00 feet;

Thence North 89° 21' 46" West, a distance of 46.00 feet;

Thence North 01° 50' 17" West, a distance of 133.96 feet;

Thence North 16° 24' 02" West, a distance of 258.25 feet;



Thence North 22° 35' 44" West, a distance of 960.32 feet to the POINT OF TERMINUS on the North line of the Southeast Quarter of said Section 5.

Section 8:

All of Section 8, Township 10 South, Range 10 East, Gila and Salt River Meridian, Pinal County, Arizona, Except the South One-Half of the Southwest Quarter thereof.

EXCEPTING any portion lying within the following described tract;

BEGINNING at the Northeast corner of said Section 8;

THENCE West along the North boundary line of said Section 8, a distance of 512 feet to a point;

THENCE South parallel with the East boundary line of said Section 8, a distance of 512 feet to a point;

THENCE East 512 feet to a point on the East boundary line of said Section 8;

THENCE North a distance of 512 feet to the POINT OF BEGINNING.

And ALSO EXCEPTING any portion lying within the following described tract;
The West 132 feet of the East 644 feet of the North 512 feet of Section 8, Township 10 South, Range 10 East of the Gila and Salt River Base Meridian, Pinal County, Arizona.

Section 9:

All of Section 9, Township 10 South, Range 10 East of the Gila and Salt River Meridian, Pinal County, Arizona, Except any portion thereof within right-of-way of Interstate 10 and the Union Pacific Railroad;

EXCEPT that portion described as follows:

Commencing at the Northwest corner of said Section 9;

Thence South 00° 10' 52" West along the West line of said Section 9, a distance of 431.07 feet to the intersection of the West line of said Section 9 and a line parallel to and 50.00 feet Southerly of the centerline of Sasco Road as it now exists;

Thence North 67° 19' 22" East, parallel to and 50.00 feet Southerly of the centerline of Sasco Road, a distance of 771.10 feet to the TRUE POINT OF BEGINNING;



Thence continue North 67° 19' 22" East, a distance of 200.00 feet;

Thence South 22° 40' 38" East, a distance of 150.00 feet;

Thence South 67° 19' 22" West, a distance of 200.00 feet;

Thence North 22° 40' 38" West, a distance of 150.00 feet to the TRUE POINT OF BEGINNING;

And ALSO EXCEPTING that portion described as follows:

Commencing at the Northwest corner of said Section 9;

Thence South 00° 10' 52" West along the West line of said Section 9, a distance of 431.07 feet to the intersection of the West line of said Section 9 and a line parallel to and 50.00 feet Southerly of the centerline of Sasco Road as it now exists;

Thence North 67° 19' 22" East, parallel to and 50.00 feet Southerly of the centerline of Sasco Road, a distance of 671.10 feet to the TRUE POINT OF BEGINNING;

Thence continue North 67° 19' 22" East, a distance of 100.00 feet;

Thence South 22° 40' 38" East, a distance of 150.00 feet;

Thence South 67° 19' 22" West, a distance of 100.00 feet;

Thence North 22° 40' 38" West, a distance of 150.00 feet to the TRUE POINT OF BEGINNING;

And ALSO EXCEPTING that portion described as follows:

Commencing at the Northwest corner of said Section 9;

Thence South 00° 10' 52" West along the West line of said Section 9, a distance of 431.07 feet to the intersection of the West line of said Section 9 and a line parallel to and 50.00 feet Southerly of the centerline of Sasco Road as it now exists;

Thence North 67° 19' 22" East parallel to and 50.00 feet Southerly of the centerline of Sasco Road, a distance of 971.10 feet to the TRUE POINT OF BEGINNING;

Thence continue North 67° 19' 22" East, 115.75 feet to a point on the westerly line of the Interstate 10 Red Rock Interchange right-of-way, being on a non-tangent curve, concave

Revised August 11, 2004
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Westerly, the center of said curve bears South 75° 44' 03" West, a distance of 1045.92 feet;

Thence Southerly along said right-of-way line and the arc of said curve, through a central angle of 07° 17' 12", a distance of 133.02 feet to a point of non-tangency;

Thence South 67° 19' 22" West, a distance of 42.99 feet;

Thence South 22° 19' 22" West, a distance of 28.28 feet;

Thence south 67° 19' 22" West, a distance of 25.00 feet;

Thence North 22° 40' 38" West, a distance of 150.00 feet to the TRUE POINT OF BEGINNING.

And ALSO EXCEPTING the following described parcel:

COMMENCING at the Southeast corner of the Southeast quarter of said Section 9;

THENCE North 89° 56' 53" West along the South line of said Southeast quarter a distance of 58.87 feet to a point on the West right of way line of Interstate 10 and the POINT OF BEGINNING;

THENCE continue North 89° 56' 53" West, along said South line, a distance of 1,700.25 feet to the East line of an El Paso natural gas easement;

THENCE North 37° 51' 09" West along said East line a distance of 1,365.93 feet;

THENCE North 54° 47' 04" East a distance of 1,444.28 feet to said West right of way line;

THENCE South 35° 22' 56" East along said right of way line a distance of 856.29 feet;

THENCE South 35° 22' 45" East along said right of way line a distance of 1,494.12 feet to the POINT OF BEGINNING.

Section 10:

The west one-half of the Southwest Quarter (SW ¼) of Section 10, Township 10 South, Range 10 East, Gila and Salt River Meridian, Pinal County, Arizona. Except any portion thereof within right-of-way of Interstate 10 and the Union Pacific Railroad.

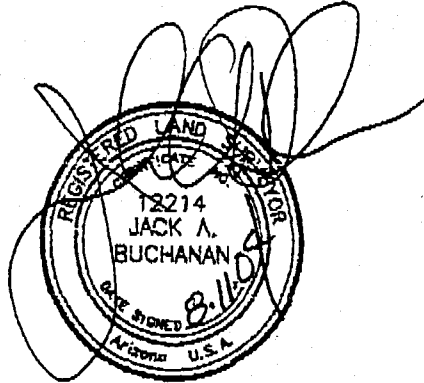
The
WLB
Group
Inc

See ATTACHMENT "B" for reference.

Prepared By:

THE WLB GROUP, INC.

Jack A. Buchanan
JAB:



The
WLB
Group
INC.

October 31, 2003
WLB No. 100050-a001-1002
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LEGAL DESCRIPTION
RED ROCK UTILITIES L.L.C.
C.C. & N. AREA

The Southwest Quarter of Section 4, Township 10 South, Range 10 East, Gila and Salt River Base and Meridian, Pinal County, Arizona.

The Southeast Quarter of Section 5, Township 10 South, Range 10 East, Gila and Salt River Base and Meridian, Pinal County, Arizona.

All of Section 8, Township 10 South, Range 10 East, Gila and Salt River Base and Meridian, Pinal County, Arizona, except the South One-Half of the Southwest Quarter thereof.

All of Section 9, Township 10 South, Range 10 East, Gila and Salt River Base and Meridian, Pinal County, Arizona.

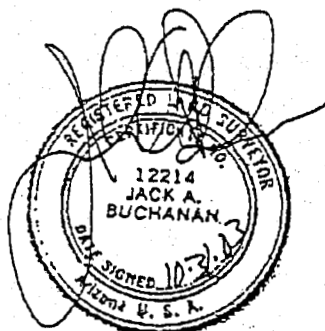
The west one-half of the Southwest Quarter (SW ¼) of Section 10, Township 10 South, Range 10 East, Gila and Salt River Base and Meridian, Pinal County, Arizona.

See ATTACHMENT "B" for reference.

Prepared By:

THE WLB GROUP, INC.

Jack A. Buchanan
JAB:



MEMORANDUM

TO: James Fisher
Executive Consultant – Utilities Division

FROM: Charles R. Myhlhousen
Public Utilities Analyst II – Utilities Division

Date: August 2, 2004

RE: RED ROCK UTILITES, L.L.C. APPLICATION FOR A NEW
CERTIFICATE OF CONVENIENCE AND NECESSITY
DOCKET NO. WS-04245A-04-0184

Introduction

On March 10, 2004 Red Rock Utilities, L.L.C. ("Company") submitted an application to the Arizona Corporation Commission ("Commission") for a Certificate of Convenience and Necessity ("CC&N") to provide public utility water service and wastewater service in Pinal County, Arizona. The application indicates that there are presently no customers receiving service in the area of the requested CC&N. At the end of five years the Company is projecting to be servicing 1,220 customers.

Fair Value Rate Base

Consistent with Commission rules, the Company's filing included the required five-year projections for plant values, operating revenues, operating expenses, and number of customers. Projections and assumptions are necessary to establish a fair value rate of return and initial rates due to the lack of historical information. Staff reviewed the Company's projections and found them generally reasonable.

Rate Base/Plant in Service

Staff determined the rate base for the water plant in service to be \$1,498,335 (Schedule CRM-W-1). Staff determined the rate base for the wastewater plant in service to be \$4,657,304 (Schedule CRM-WW-1). Staff reviewed the Company's projections and found them generally reasonable except that Staff adjusted rate base to reflect its removal of the Company's proposed hook-up fees. The water and wastewater plant in service were found to be reasonable (Schedules CRM-W-2 and CRM-WW-2).

Revenue and Expenses

As justification for the initial rates, the Company has estimated its revenue and expenses. Staff has reviewed the estimates and they appear reasonable except that Staff removed income tax expense. LLC's have the option of filing as a partnership with no income tax liability. Also Staff removed a "below the line" interest expense item. The projected income statements for water and wastewater are depicted at Schedules CRM-W-3 and CRM-WW-3.

Rate Design

The Company's projected revenue is derived from the residential and commercial customer classes. Staff has reviewed the estimates and found them to be reasonable.

There are some differences between the Company proposed rates and Staff's recommended rates. Staff has provided minimum charges on all meter sizes in case future construction requires use of larger meters. To promote conservation in the use of water the Commission has been recommending a three-tiered rate structure for the commodity charges. Staff recommends its three tier rates verses the Company's proposed two-tier rates for 5/8 inch meter customers (see Schedule CRM-W-4). Staff's recommended rates will result in a monthly residential bill of \$45.25 based on average usage of 7,600 gallons.

The wastewater rates requested by the Company are a monthly fixed fee. Staff has recommended changes in the fixed fee for the 3/4 inch and 3 inch meter sizes. (see Schedule CRM-WW-4). Staff's recommended residential fee is \$39.50.

The Company's hook-up fees were removed by Staff. It is this Commission's normal procedure to allow hook-up fees only to companies already holding and operating under a CC&N. Staff recommends that the Company's charge for minimum deposit be as per Rule R14-2-403.B. The other service charges proposed were found reasonable and should be adopted for the Company's initial rates.

Recommendations

Staff recommends:

- approval of Staff's rates as shown on Schedules CRM-W-4 and CRM-WW-4. In addition to collection of its regular rates, the Company may collect from its customers a proportionate share of any privilege, sales or use tax.
- the Company be required to notify the Director of the Utilities Division within 15 days of providing service to its first customer.
- the Company be required to file a rate application no later than three months following the fifth anniversary of the date the Company begins providing service to its first customer.
- the Company be required to maintain its books and records in accordance with the NARUC Uniform System of Accounts for Water and Wastewater Utilities.
- the Company be required to use the depreciation rates recommended by Staff Engineering for water and wastewater utilities.

RATE BASE

WATER

	----- Original Cost -----		
	Company	Adjustment	Staff
Plant in Service	\$1,778,990	\$0	\$1,778,990
Less:			
Accum. Depreciation	39,732	(5,215)	34,517
Net Plant	\$1,739,258	\$5,215	\$1,744,473
Less:			
Advances in Aid of Construction	\$159,247	\$0	\$159,247
Meter Deposits (Meter & Service Line)	92,900	0	92,900
Total Advances	\$252,147	\$0	\$252,147
Contributions Gross	\$233,500	(\$233,500)	\$0
Less:			
Amortization of CIAC	5,215	(5,215)	0
Net CIAC	\$228,285	(\$228,285)	\$0
Total Deductions	\$480,432	(\$228,285)	\$252,147
Plus:			
1/24 Power	\$0	\$493	\$493
1/8 Operation & Maint.	0	5,516	5,516
Inventory	0	0	0
Prepayments	0	0	0
Total Additions	\$0	\$6,009	\$6,009
Rate Base	\$1,258,826	\$239,509	\$1,498,335

PLANT ADJUSTMENT

WATER

	Company Exhibit	Adjustment	Staff Adjusted
301 Organization	\$15,000	\$0	\$15,000
302 Franchises	0	0	0
303 Land & Land Rights	7,500	0	7,500
304 Structures & Improvements	0	0	0
305 Collecting & Impounding Rese	369,050	0	369,050
307 Wells & Springs	248,270	0	248,270
311 Pumping Equipment	288,530	0	288,530
320 Water Treatment Equipment	0	0	0
330 Distribution Reservoirs & Standpipes	355,630	0	355,630
331 Transmission & Distribution Mains	216,612	0	216,612
333 Services	154,330	0	154,330
334 Meters and Meter Installationss	95,685	0	95,685
335 Hydrants	28,383	0	28,383
336 Backflow Prevention Devices	0	0	0
339 Other Plant and Misc Equipment	0	0	0
340 Office Furniture & Equipment	0	0	0
341 Transporation Equipment	0	0	0
343 Tools Shop & Garage Equipment	0	0	0
344 Laboratory Equipment	0	0	0
345 Power Operated Equipment	0	0	0
346 Communication Equipment	0	0	0
347 Miscellaneous Equipment	0	0	0
348 Other Tangible Plant	0	0	0
TOTALS	\$1,778,990	\$0	\$1,778,990

Red Rock Utilities, L.L.C.

Docket Nui Docket No.

New C C & N Application

Schedule CRM-W-3

WATER

Projected Statement of Income and Expenses

Line No.	Description	Year 1	Year 2	Year 3	Year 4	Year 5
	<u>Revenues</u>					
1	Water Revenues	\$ 75,236	223,830	389,351	553,316	682,204
2	Total Revenue	75,236	223,830	389,351	553,316	682,204
3	<u>Expenses</u>					
4	Pumping Power	11,833	41,148	69,688	91,671	116,519
5	Repairs & Maintenance	5,616	16,176	27,168	39,744	52,800
6	Insurance	1,895	5,459	9,169	13,414	17,820
7	Water Treatment & Testing	1,170	3,370	5,660	8,280	11,000
8	Billing, Postage, Operations	16,848	48,528	81,504	119,232	158,400
9	Depreciation	34,517	69,593	78,038	87,442	97,333
10	Office Supplies	5,000	5,150	5,305	5,464	5,628
11	Legal and Accounting	10,000	10,300	10,609	10,927	11,255
12	Miscellaneous	3,600	3,708	3,819	3,934	4,052
13	Income Taxes	-	-	-	-	-
14	Property Taxes	2,408	3,993	7,343	12,229	17,119
15	Total Expenses	\$ 92,887	\$ 207,425	\$ 298,303	\$ 392,337	\$ 491,926
16	Operating Income (loss)	\$ (17,651)	\$ 16,405	\$ 91,048	\$ 160,979	\$ 190,278

RATE SCHEDULE - WATER

<u>Monthly Minimum Charge</u>	<u>-Proposed Rates-</u>	
	<u>Company</u>	<u>Staff</u>
5/8" x 3/4" Meter Size	25.00	\$25.00
3/4" Meter Size	25.00	37.50
1" Meter Size	62.50	62.50
1 1/2" Meter Size	125.00	125.00
2" Meter Size	200.00	200.00
3" Meter Size	400.00	375.00
4" Meter Size	625.00	625.00
6" Meter Size	1,250.00	1,250.00
Gallons in Minimum	0	0
Commodity Charge Proposed Rates:		
<u>5/8X3/4 inch meter size</u>		
From 0 to 5,000 gallons	2.40	n/a
All gallons over 5,000 gallons	3.15	n/a
From 0 gallons to 5,000 gallons	n/a	2.40
From 5,001 gallons to 10,000 gallons	n/a	3.15
All gallons over 10,000 gallons	n/a	3.90
<u>All other meter sizes except irrigation</u>		
From 0 gallons to 5,000 gallons	2.40	\$2.40
All gallons over 5,000 gallons	3.15	3.15
<u>All irrigation meter sizes</u>		
From 0 gallons to 20,000 gallons	2.40	2.40
All gallons over 20,000 gallons	3.15	3.15
<u>Standpipe or bulk water</u>		
per 1,000 gallons	3.50	3.90
<u>Hook-up fees</u>		
5/8" x 3/4" Meter Size	1,000	0.00
3/4" Meter Size	1,000	0.00
1" Meter Size	2,500	0.00
1 1/2" Meter Size	5,000	0.00
2" Meter Size	8,000	0.00
3" Meter Size	16,000	0.00
4" Meter Size	25,000	0.00
6" Meter Size	50,000	0.00

Red Ock Utilities L.L.C.
Docket Number WS- 04245A-04-0184
New C C & N Application

Schedule CRM-W-4 Page 2 of 2

Service Charges

Establishment of Service per Rule R14-2-403.D	25.00	\$25.00
Establishment of Service After Hours per Rule R14-2-403.D.2	50.00	50.00
Re-establishment of Service per Rule 14-2-403.D	see a.	**
Reconnection of Service per Rule R14-2-403.D.1	30.00	30.00
Charge for Moving Meter at Customer Request per Rule R14-2-405.B.5	@ Cost	Cost
After Hours Service Charge, per Hour, R14-2-403.D	50.00	50.00
Minimum Deposit per Rule R14-2-403.B	n/a	-
Meter Reread per Rule R14-2-408	15.00	15.00
Charge for NSF check per Rule R14-2-409.F.1	25.00	25.00
Late Payment Charge for Delinquent Bills as Defined in Rule R14-2-409.C.1	1.50%	1.50%
Deferred Payment Finance Charge R14-2-409.G	1.50%	1.50%

Service Line and Meter Installation Charges

5/8" x 3/4" Meter	\$400.00	\$400.00
3/4" Meter	440.00	440.00
1" Meter	500.00	500.00
1½" Meter	715.00	715.00
2" Meter Turbo	1,170.00	1,170.00
2" Meter Compound	1,700.00	1,700.00
3" Meter Turbo	1,585.00	1,585.00
3" Meter Compound	2,190.00	2,190.00
4" Meter Turbo	2,540.00	2,540.00
4" Meter Compound	3,215.00	3,215.00
6" Meter Turbo	4,815.00	4,815.00
6" Meter Compound	6,270.00	6,270.00

* Per Commission Rules (R14-2-403.B)

** Months off system times the minimum (R14-2-403.D)

RATE BASE			
WASTEWATER			
	----- Original Cost -----		
	Company	Adjustment	Staff
Plant in Service	\$5,013,101	\$0	\$5,013,101
Less:			
Accum. Depreciation	33,161	(3,090)	30,071
Net Plant	\$4,979,940	\$3,090	\$4,983,030
Less:			
Advances in Aid of Construction	\$330,105	\$0	\$330,105
Meter Deposits (Meter & Service Line)	0	0	0
Total Advances	\$330,105	\$0	\$330,105
Contributions Gross	\$467,000	(\$467,000)	\$0
Less:			
Amortization of CIAC	3,089	(3,089)	0
Net CIAC	\$463,911	(\$463,911)	\$0
Total Deductions	\$794,016	(\$463,911)	\$330,105
Plus:			
1/24 Power	0	\$455	\$455
1/8 Operation & Maint.	0	3,924	3,924
Inventory	0	0	0
Prepayments	0	0	0
Total Additions	\$0	\$4,379	\$4,379
Rate Base	\$4,185,924	\$471,380	\$4,657,304

PLANT ADJUSTMENT

WASTEWATER

	Company Exhibit	Adjustment	Staff Adjusted
351 Organization	\$15,000	\$0	\$15,000
352 Franchises	0	0	0
353 Land & Land Rights	75,000	0	75,000
354 Structures & Improvements	0	0	0
355 Collection Sewer-Force	0	0	0
360 Collection Sewer-Gravity	0	0	0
361 Special Collecting Structures	330,105	0	330,105
362 Services to Customers	0	0	0
363 Flow Measuring Devices	231,495	0	231,495
364 Flow Measuring Installations	0	0	0
365 Reuse Services	0	0	0
366 Reuse Meters and Meter Installation	0	0	0
367 Receiving Wells	0	0	0
370 Pumping Equipment	0	0	0
371 Reuse Distribution Reservoirs	0	0	0
374 Reuse Transmission and Distribution	127,490	0	127,490
375 Treatment and Disposal Equipment	208,010	0	208,010
380 Plant Sewer	4,026,001	0	4,026,001
381 Outfall Sewer Lines	0	0	0
382 Other Plant and Miscellaneous	0	0	0
389 Office Furniture and Equipment	0	0	0
390 Transportation Equipment	0	0	0
TOTALS	\$5,013,101	\$0	\$5,013,101

Red Rock Utilities, L.L.C.
Docket Nui Docket No.
New C C & N Application

Schedule CRM-WW-3

WASTEWATER

Projected Statement of Income and Expenses

Line No.	Description	Year 1	Year 2	Year 3	Year 4	Year 5
	<u>Revenues</u>					
1	Water Revenues	\$ 61,249	178,358	300,710	438,939	582,413
2	Total Revenue	61,249	178,358	300,710	438,939	582,413
3	<u>Expenses</u>					
4	Pumping Power	10,912	32,412	54,841	79,456	105,001
5	Repairs & Maintenance	5,568	16,008	26,928	39,504	52,560
6	Insurance	1,879	5,403	9,088	13,333	17,739
7	Water Treatment & Testing	2,500	2,575	2,652	2,732	2,814
8	Billing, Postage, Operations	9,048	26,013	43,758	64,194	85,410
9	Depreciation	30,071	92,266	130,409	129,920	218,276
10	Office Supplies	5,000	5,150	5,305	5,464	5,628
11	Legal and Accounting	5,000	5,150	5,305	5,464	5,628
12	Miscellaneous	2,400	2,472	2,546	2,623	2,701
13	Income Taxes	-	-	-	-	-
14	Property Taxes	1,960	3,209	5,763	9,792	14,102
15	Total Expenses	\$ 74,338	\$ 190,658	\$ 286,595	\$ 352,482	\$ 509,859
16	Operating Income (loss)	\$ (13,089)	\$ (12,300)	\$ 14,115	\$ 86,457	\$ 72,554

RATE SCHEDULE - WASTEWATER

Based on Water Usage

Monthly Minimum Charge

5/8 x3/4

3/4"

1"

1 1/2 "

2"

3

4"

6'

-Proposed Rates-

Company

Staff

\$39.50

\$39.50

\$39.50

\$59.25

\$98.75

\$98.75

197.50

197.50

316.00

316.00

632.00

592.50

987.50

987.50

1,975.00

1,975.00

Treated Effluent per Acre Foot

300.00

300.00

Hook-up Fee

Water

Meter Size

5/8x3/4

3/4"

1

1 1/2

2"

3"

4"

6"

2,000.00

0.00

2,000.00

0.00

5,000.00

0.00

10,000.00

0.00

16,000.00

0.00

32,000.00

0.00

50,000.00

0.00

100,000.00

0.00

Service Line Connection Charge

Establishment of Service

Establishment of Service, After Hours

25.00

25.00

(Collected only if customer is sewer only)

Re-establishment of Service

50.00

**

Reconnection of Service

30.00

30.00

After Hours Service Charge, per Hour

50.00

50.00

Minimum Deposit

2X monthly bill

-

Charge for NSF Check

25.00

25.00

Late Payment Charge for Delinquent Bills

n/a

1.50%

Deferred Payment Finance Charge

1.50%

1.50%

Main Extension and Additional Facilities Agreements.

Cost (b)

"Remove"

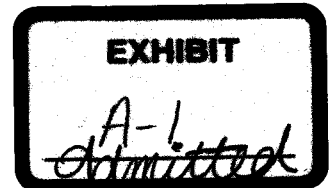
* Per Commission Rules (R-14-2-603.B)

** Months off system times minimum (R14-2-603.D)

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

3 IN THE MATTER OF THE APPLICATION OF)
4 VOYAGER WATER COMPANY FOR AN)
5 EXTENSION OF THE SERVICE AREA UNDER) DOCKET NO.:
6 ITS EXISTING CERTIFICATE OF) W-02104A-01-0742
7 CONVENIENCE AND NECESSITY TO PROVIDE)
8 WATER UTILITY SERVICE.)
9



9 At: Phoenix, Arizona
10 Date: October 29, 2003
11 Filed: November 17, 2003
12

13

14

REPORTER'S TRANSCRIPT OF PROCEEDINGS

15

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**DISK
ENCLOSED**

ARIZONA REPORTING SERVICE, INC.

Court Reporting
Suite Three
2627 North Third Street
Phoenix, Arizona 85004-1126

Prepared for:

By: COLETTE E. ROSS
Certified Court Reporter
Certificate No. 50658

VOYAGER WATER COMPANY

**CERTIFIED COPY
(When in red)**



1	INDEX TO EXAMINATIONS		
2	WITNESSES		PAGE
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15	INDEX TO EXHIBITS		
16	NO.	DESCRIPTION	IDENTIFIED ADMITTED
17			
	A-1	Analysis of Assured	9 50
18		Water Supply, Dated	
		10/11/2002 for Voyager	
19		Expansion	
20	A-2	Pima County Department	17 50
		Approval to Construct for	
21		Water Main in Kolb Road	
22			
23			
24			
25			

1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 1 of said
4 Commission, 1200 West Washington Street, Phoenix, Arizona,
5 commencing at 1:31 p.m. on the 29th of October, 2003.

6

7

BEFORE: TEENA I. WOLFE, Administrative Law Judge

8

9

APPEARANCES:

10

For the Arizona Corporation Commission:

11

Mr. David M. Ronald
Staff Attorney, Legal Division
1200 West Washington Street
Phoenix, Arizona 85007-2927

14

For the Applicant:

15

LEWIS AND ROCA, L.L.P.
By Ms. Mary Beth Savel
One South Church Avenue, Suite 700
Tucson, Arizona 85701

18

19

COLETTE E. ROSS
Certified Court Reporter
Certificate No. 50658

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25

1 ALJ WOLFE: Good afternoon, and welcome to the
2 Arizona Corporation Commission. My name is Teena Wolfe
3 and I am the administrative law judge assigned to this
4 matter.

5 This is the time and place setting for the
6 hearing on our request to amend Decision No. 64406, dated
7 January 31st, 2002, in Docket No. W-02104A-01-0742 in the
8 matter of application of Voyager Water Company for an
9 extension of the service area under its existing
10 certificate of convenience and necessity to provide water
11 utility services.

12 We will begin today by taking appearances
13 beginning with the applicant.

14 MS. SAVEL: Mary Beth Savel with Lewis and
15 Roca, One South Church Street, Suite 700, Tucson 85701,
16 for Voyager Water.

17 ALJ WOLFE: Thank you, Ms. Savel.

18 For Staff?

19 MR. RONALD: David Ronald appearing for Staff.

20 ALJ WOLFE: I guess I will just cover
21 procedural matters first. Ms. Savel, do you plan to call
22 just one witness?

23 MS. SAVEL: Your Honor, I plan to call two
24 witnesses, Mark Weinberg from Diamond Ventures, who is one
25 of the master developers that will be involved in the

1 extension area, and Doug Dunham from the Arizona
2 Department of Water Resources, who is the manager of the
3 assured water supply division.

4 ALJ WOLFE: Okay. And, Mr. Ronald?

5 MR. RONALD: Possibly Jim Fisher.

6 ALJ WOLFE: Okay. I would like to hear from a
7 Staff witness.

8 MR. RONALD: Okay.

9 ALJ WOLFE: Do you wish to make an opening
10 statement, Ms. Savel?

11 MS. SAVEL: I thought we would just bring us
12 up to speed procedurally, and also a little factual
13 background on where the status of the development is so
14 that we can put this in context. And then I thought I
15 would go ahead and call Mr. Dunham and let him go ahead
16 and testify so we could get him back to his office and not
17 take his whole afternoon. And then Mr. Weinberg will come
18 back and we will be finished. Okay?

19 As you know, on January, on January 2002, the
20 ACC granted the conditional certificate of CC&N
21 extension for about 290 acres which is adjacent to the
22 existing Voyager Water Company service area. There are
23 two owners of that extension property, Diamond Ventures,
24 through its company WPI, WPI & Kolb I10 L.L.C., which I
25 just refer to as WPI because I can't say that many words,

1 and Voyager RV Resort which is the Voyager Water -- is
2 associated with and owned by Isaacson but is a separate
3 entity for the water company. It is a separate entity.

4 Voyager owns about 64 acres of that extension
5 area. WPI owns about 226 acres so they are the larger of
6 the two property owners receiving services.

7 At the time that the Decision 64406 was
8 granted, it was conditioned that Voyager return with
9 either a certificate or a designation of assured water
10 supply for the entire 290 acres of the expansion area and
11 also to return with ADEQ approval to construct for
12 expansion of the infrastructure.

13 The order itself says for the area to be
14 developed by Diamond Ventures and the area to be developed
15 by RV Resorts. We concluded that means the entire area to
16 be included in the expansion area, although it is not
17 entirely precise.

18 So one of the reasons we want to be before the
19 Administrative Law Judge and the ACC is to get a
20 modification or clarification of what that area should be
21 in terms of the areas to be covered by the approvals to
22 construct.

23 On October 11th, 2002, we received from the
24 Arizona Department of Water Resources, and when I say we,
25 I mean Voyager Water Company, an approved analysis of

1 assured water supply, not a certificate, not a
2 designation, but an analysis of assured water supply. And
3 one of the reasons that I invited Mr. Dunham to come and
4 talk to us today was to give us a little background on the
5 role of the analysis and how it works with the certificate
6 or the designation in the development of the property for
7 assuring water supplies.

8 That analysis was attached as an exhibit to
9 our request to modify or amend Exhibit A. And the court
10 reporter has marked it here today as Applicant's
11 Exhibit 1. And we may, Mr. Dunham may refer to it in his
12 testimony.

13 The analysis found that the extension area
14 contains the physical, continuous and legal availability
15 of water for 100 years. It was based upon a hydrological
16 study which found that.

17 It also found that the available water quality
18 was of adequate water quality under ADEQ requirements and
19 found that the proposed water use appeared to be
20 consistent with the Third Management Plan and goes for the
21 Active Management Area in Tucson.

22 Finally, the analysis from ADWR indicated that
23 they would wait for an establishment of the financial
24 capability of the expansion of infrastructure improvements
25 for submittal at the time that each subdivision is

1 prepared and platted for development.

2 And so when we came back in December of 2002,
3 the Voyager Water Company came back to request to extend
4 the time period on the conditional CC&N because things had
5 taken a little longer than expected. Primarily the
6 property needed to be rezoned by the jurisdiction in the
7 City of Tucson in which it is located.

8 That process is moving along fairly well. The
9 226 acres owned by WPI was rezoned by the City of Tucson
10 Mayor Council in May of 2003 effective in June. Since
11 that time, WPI has been working on preparing its platting
12 for that property.

13 For the 64 acres owned by Voyager RV Resort,
14 the rezoning has taken a little longer. It went through a
15 public hearing this summer. And, at the request of the
16 Mayor Council, the actual consideration was continued
17 until November 17th. They wanted to wait until after the
18 elections in Tucson to consider the rezoning. And so it
19 is scheduled for consideration by the Mayor Council coming
20 up in November.

21 And then, assuming the rezoning is approved,
22 which there is no reason to think it wouldn't be, it would
23 become effective 30 later. And after that, platting for
24 that 64 acres will begin and will be -- the preparation
25 and then submittal and processing for plat approval

1 through the City of Tucson will be done in the next nine
2 months or so. So the process is going forward.

3 Finally, we do have some, we have an approval
4 to construct received from the Pima County Department of
5 Environmental Quality for the off-site water extension in
6 Kolb Road. The plans are in place and in with the
7 Department of Environment Quality in Tucson to go ahead
8 and approve the reservoir extension as well as the -- just
9 let me check.

10 The reservoir and the booster station plans
11 have been submitted for approval. And they are -- and at
12 this point in time that is probably as far as the
13 engineering staff can go in submitting improvement plans
14 for the expansion area until the further subdivision of
15 the property has been implemented. And we do have a copy
16 of the Pima County's certificate of approval to construct
17 for the water main in Kolb Road. It has been identified
18 as Applicant's Exhibit 2 if we introduce it for the court,
19 for the record.

20 So we are here today to request that the ACC
21 modify or amend the existing decision affecting the
22 conditional expansion of the CC&N area. We submitted our
23 request for that on June 26, 2003. Our deadline for
24 completing the conditions was November 1st, 2003, which is
25 coming right up around the corner.

1 Obviously we won't be done with the rezoning
2 because we won't be done with the subdivision plat
3 approvals by that time. But rather than us ask for an
4 extension at the end of the year, Voyager decided to ask a
5 little something more, a little bit different.

6 The things we are asking for, number one, are
7 that the ACC accept the October 2002 analysis of assured
8 water supply as approved by ADWR as an adequate assurance
9 of assured water supply for this particular expansion area
10 and thereby no longer condition the expansion but just go
11 ahead and approve it. And Mr. Dunham is here today to
12 talk a little bit about the analysis, what it provides and
13 that kind of thing so that the ACC will understand.

14 Second, we ask that the ACC eliminate the
15 requirement for a submittal of the certificate of assured
16 water supply or designation of assured water supply to the
17 ACC. ADWR will issue certificates of assured water supply
18 to individual subdividers when the subdivision plats are
19 ready to be submitted and ADWR will oversee that
20 certificate issuance. So we are proposing, rather than
21 that, having the ACC also do that, that we simply use the
22 analysis and let the certificates be submitted to ADWR in
23 the normal course.

24 In the alternative, if that's something the
25 ACC wouldn't be comfortable with, we would request,

1 instead of the certificate having been submitted by the
2 water company or master developer, that it be submitted as
3 individual subdivision plats are completed and approved
4 and, rather than condition that on a time frame going
5 forward, we just go ahead and make that a requirement and
6 approve the expansion of the CC&N unconditionally with
7 that as a subsequent requirement.

8 And then, finally, coming back to the ADEQ
9 approvals to construct, we would request that, for the
10 same, for similar reasons, that we would ask for the
11 certificates to be submitted by the individual
12 subdividers. We would also ask that the approvals to
13 construct be submitted to the ACC along with line
14 extension agreements for the individual subdivisions as
15 they are done in phases, rather than all at one time up
16 front for the entire project because this is going to be a
17 phase project.

18 On August 18th the ACC Staff filed a response
19 indicating there was no objection to Voyager's request.
20 And since that time we have, we have consulted with Staff
21 and with legal counsel and are here before you to present
22 some more information and evidence to support our request.

23 So if I may go forward now, I would like to go
24 call Mr. Dunham unless the Court has any questions.

25 ALJ WOLFE: I have one question. In your

1 June 27th, 2003 filing, on page 5 you reiterated all those
2 requests to modify, but you didn't repeat number five.
3 Are you still asking for that elimination of the time
4 limits currently in effect for that decision?

5 MS. SAVEL: Yes, I would. That would kind of
6 be an umbrella request, instead of placing time limits on
7 the CC&N extension, the ALJ recommended to the ACC
8 removing any time limits and simply approve the CC&N
9 extension expansion and then place the requirements of
10 additional filings later on so it won't be conditional.

11 ALJ WOLFE: Okay. Mr. Ronald, do you have an
12 opening statement?

13 MR. RONALD: Just, Your Honor, that Staff
14 continues to not object to the request.

15 ALJ WOLFE: Okay. That has continued to
16 puzzle me, as the request has alternatives in it. So I
17 would like to know before the hearing is over which of
18 these requests Staff wants to be adopted.

19 MR. RONALD: I understand, Your Honor.

20 ALJ WOLFE: Okay. You may call your witness.

21 MS. SAVEL: I would like to call Doug Dunham.

22 ALJ WOLFE: You can come right up here and be
23 sworn, sir. And thank you for coming here.

24

25

1 DOUG DUNHAM,
2 a witness herein, having been first duly sworn by the
3 Certified Court Reporter to speak the truth and nothing
4 but the truth, was examined and testified as follows:

5

6 DIRECT EXAMINATION

7 BY MS. SAVEL:

8 Q. Mr. Dunham, would you go ahead and state your
9 name and your address for the record.

10 A. My name is Doug Dunham, D-U-N-H-A-M. I am
11 with the Department of Water Resources. Their address is
12 500 North Third Street, Phoenix, Arizona 85004.

13 Q. Mr. Dunham, what is your job with the
14 Department of Water Resources?

15 A. I manage the office of assured adequate water
16 supply.

17 Q. And what does that mean? What do you do in
18 your job?

19 A. The office of assured natural water supply
20 manages all of the applications for certificates of
21 assured water supply, analyses of assured water supply,
22 designation of assured water supply as well as the sister
23 applications outside of the active management areas in the
24 adequacy programs.

25 Q. We are going to talk today about the Tucson

1 Active Management Area where Voyager Water Company is
2 located. And I am going to just take you through and ask
3 you to explain some of the background and the procedural
4 issues and the substantive purposes of some of these
5 different, different designations that you have talked
6 about today.

7 And I thought we would start first with the
8 analysis of assured water supply because it is one of the
9 issues that we have before the ALJ today. What is
10 assured, an analysis of assured water supply?

11 A. An analysis of assured water supply is an
12 application designed for master developers. In most cases
13 very large developments are not fully engineered to the
14 point where they have recordable plats. That's one of the
15 key elements that is required for a certificate of assured
16 water supply. So the analysis is designed to allow a
17 large developer, large master-planned communities to
18 submit evidence of various elements for assured supply
19 without having to have the full detail needed for a
20 certificate.

21 Q. What are the elements that are submitted for
22 an analysis of assured water reply?

23 A. They can vary. For a certificate of assured
24 water supply there are five basic requirements. They have
25 to prove physical, legal and continuous availability of

1 the water supply for 100 years. They have to provide
2 proof of adequate water quality. They must provide proof
3 that the subdivision demands meet the plan for the AMA.
4 And they have to provide evidence that it meets the goal
5 of the active management area. And, lastly, they have to
6 provide proof of ownership.

7 The analysis is designed to allow a developer
8 to provide evidence of any number of those various
9 requirements. Most often, the key element that is
10 submitted for proof is that they do have the actual
11 physical availability for the subdivision.

12 Q. Now, why is that important, why is the
13 physical availability important?

14 A. The physical availability is one of the
15 elements that is not variable by changing your plan. That
16 is, that is limited by the hydrologic, geologic
17 limitations of the area. And if, for example, you have a
18 piece of the goal that is not met, you can modify your
19 plans to accordingly meet that. If the water physically
20 is not there, there is really nothing you can do.

21 So that's the key element. Most cases that's
22 the most expensive hurdle to try and meet so that, for
23 most developers, that's the key they try to prove up.

24 Q. And how do they establish that?

25 A. It varies by source of the water supply. In

1 most cases the source of water supply will be groundwater.
2 And in those cases a hydrologic study will be provided as
3 evidence as reviewed by a hydrologic staff.

4 Q. What about the other component of the
5 availability, continuous, what does that mean?

6 A. The water supply needs to be continuously
7 available and uninterrupted supply for the whole
8 100-year period. In most cases for the groundwater
9 supplies, it is considered to be continuously available,
10 because the basins are large enough that the water is
11 uninterrupted.

12 By contrast, if you had a surface water
13 supply, there could be an interruption either through
14 drought or some issue with the conveyance methods where a
15 backup or storage facility would need to be in place.

16 Q. The third point of availability you said was
17 legal availability. What does that mean?

18 A. That is correct. In such cases, such as a
19 surface water source, they have to prove that they
20 actually have the right to that water supply.

21 In a case such as this one, where it is a
22 groundwater source, they have to meet two elements for
23 proof of legal availability. One is the water supplier
24 has to have a right to use that groundwater. In this case
25 the water company does. They have a 56 right which is how

1 we regulate water providers in addition because, as a
2 private utility, we defer to the Commission's
3 determination if they have an existing CC&N.

4 If the provider was attempting to serve
5 outside of an existing CC&N, we would not say that the
6 water was legally available to them.

7 Q. So does the Department of Water Resources,
8 then, want to see that the ACC has approved CC&N expansion
9 into a new area before approving an analysis of sufficient
10 water supply?

11 A. We would need to see that before, we would
12 need to see that before we would issue a certificate of
13 assured water supply.

14 Again, the way the analysis is set up, if they
15 were missing a specific element, we would call that out in
16 the analysis and issue the analysis stating that they have
17 met four of the five, or three of the five. But we would
18 make note that that element has to be met before any
19 subsequent certificates could be issued.

20 Q. Mr. Dunham, I am going to show you Exhibit,
21 Applicant's Exhibit A-1. And that is an analysis of
22 assured water supply dated October 11th, 2002 for Voyager
23 expansion. Are you familiar with this?

24 A. Yes.

25 Q. Let's just talk about the first point,

1 physical, continuous and legal availability of water.
2 What does the analysis provide in terms of Voyager Water
3 Company's expansion area?

4 A. This analysis showed that there was a
5 hydrologic study submitted; that the department did find
6 that enough physical supply was available to meet the
7 master plan as presented; that, let's see, the legal
8 availability was met because of the approved extension of
9 the CC&N. And again the continuous availability was met
10 because it is a groundwater source.

11 Q. Thank you.

12 Now, Mr. Dunham, one of the other factors that
13 you said were necessary to establish a certificate of
14 assured water supply was the quality of the water. Based
15 upon this, does this analysis of assured water supply
16 establish that?

17 A. Yes, it does. We reviewed the compliance
18 status for the provider. Looks like there were --
19 according to analysis here, the date of that report was
20 May 16th of 2002. And it is stated, according to DEQ,
21 that the provider was in full compliance.

22 Q. The other points that you raise were
23 consistency with the management plan and management goals
24 for the Tucson Active Management Area. And I see that the
25 analysis breaks it out into two sections.

1 Would you explain first what does this
2 consistency with the management plan mean and why is that
3 important for the continuance of assured water supply?

4 A. For large subdivisions, they are required to
5 meet the consistency with management plan. In this case,
6 the models as presented under the analysis will be using
7 low-flow plumbing, they will be encouraging low-water-use
8 landscaping, and that the proposed golf courses are within
9 the Tucson Active Management Area's allocation for golf
10 courses.

11 Q. So is it fair to say then that the proposed
12 expansion plans are consistent then with the plan for the
13 area?

14 A. That's correct.

15 Q. The next one is consistency with the
16 management goal. How is that different? What does that
17 mean?

18 A. The plan by contrast, the plan would be the
19 methodologies to use such as, again, like I mentioned,
20 elements such as low-flow plumbing, low-water-use
21 landscaping, et cetera. The management goal can vary by,
22 does vary by AMA. And in the Tucson AMA, the attempt is
23 to get into safe yield by 2025.

24 What that means for a certificate applicant is
25 that, depending upon which management period they are in

1 when they apply for their certificate, they are allowed to
2 use a certain amount of groundwater. The remainder of
3 that total use has to be made up with renewable supplies.
4 That allocation factor decreases as we move into the
5 future until, at 2025, all new development is, has to be
6 100 percent renewable supplies.

7 For this particular application, the applicant
8 stated that, at the time of the certificates, they will
9 enroll all of the land within each subdivision within the
10 Central Arizona Groundwater Replenishment District.

11 Q. And they stated that the company would or the
12 individual builders and developers would?

13 A. It would have to be the individual builders
14 and developers, because the enrollment process is, it is
15 required that the actual landowner enroll in the GRD and
16 enter into the necessary covenants and restrictions that
17 the GRD requires.

18 Q. Once the enrollment takes place, how do the
19 developer/builders take care of that requirement to get
20 water replenished through GRD?

21 A. During the enrollment, it is a two-phase
22 approach for the GRD. The landowner actually has to
23 enroll to enter those restrictions with GRD. The second
24 part of that, there is also a reporting obligation
25 agreement that is entered into with the water provider and

1 the GRD.

2 What that states then is, at the end of every
3 year, the water company will report to the GRD the actual
4 water delivered on a per-lot basis within the subdivision
5 to the CAGRD. The GRD then estimates what, of the water
6 delivered, is the allowable groundwater use. The
7 remainder, the excess groundwater then all has to be
8 recharged.

9 GRD goes out, purchases excess groundwater or
10 other supplies, replenishes that volume of water somewhere
11 within the AMA. And then the cost of that activity is
12 reported to the County Assessor's Office. And eventually
13 that shows up on the property owner's tax, property tax
14 bill.

15 Q. So the individual customer of the water
16 company ends up paying for the amount of water that they
17 are replenishing essentially?

18 A. That's correct, the individual lot owner.

19 Q. Okay. Now, the last point here that is part
20 of the components and requirements for a certificate is
21 financial capability of the owner.

22 What does that mean and how is that evaluated
23 by ADWR?

24 A. The certificate, we are required to review the
25 financial capability of the developer when we issue the

1 certificate to complete the construction of all necessary
2 infrastructure to get the water to the subdivision.

3 Q. Now, do you have county staff that takes a
4 look at all the financial reports? Or how do you go about
5 doing that?

6 A. We defer to the actual platting entities.
7 They are also required under state law to ensure that,
8 once they record and approve a plat and start approving
9 building permits, that all of the necessary utility
10 infrastructure, there is enough financial capability to
11 complete those. So that would be in addition to all the
12 necessary water-associated equipment, wells, storage, et
13 cetera. There is also sewer components, electrical,
14 roads, all the other associated utilities.

15 Q. So who would be the entity that has the
16 information to establish the financial capability? Is it
17 the water company or is it the subsequent subdividers?

18 A. Ultimately, what we -- in most cases we rely
19 on the county or the city who is actually recording the
20 plat. They require the necessary bonding to complete all
21 of those, the infrastructure. Occasionally we have had
22 cases where an individual subdivider presents that bonding
23 evidence to us directly.

24 Q. Okay. And in terms of the analysis of assured
25 water supply for Voyager Water Company here, what is the

1 status of the financial capability?

2 A. We did not review that. And that will be
3 reviewed during each individual certificate application.

4 Q. Okay. Thank you.

5 I have one last question on the analysis. It
6 says it has a term of ten years. How do you, how does
7 ADWR arrive at that term and what happens during that term
8 of ten years?

9 A. The ten-year time frame was developed using
10 our rules promulgation process. What we do is, any
11 competing applications in the area, we consider the full
12 demands associated with this application to be in place
13 for a period of ten years. So that's one of the
14 advantages to a large master builder applying under the
15 analysis when they are not actually ready to plat yet, is
16 that, if there are competing sources for the water in the
17 area, we consider those demands to be in place.

18 Q. Now, you talked about the analysis of assured
19 water supply here as meeting some but not all of the
20 requirements for the certificate of assured water supply.
21 But is there anything else that is required to be able to
22 obtain a certificate of assured water supply other than
23 these five elements you have talked about?

24 A. One of the components is, again, we need to be
25 able to review, for the certificate, we need to be able to

1 review an actual recordable plat. And for the analysis,
2 we will accept just a general land use plan.

3 Q. When you say a recordable plat, what level of
4 detail are you looking for?

5 A. What we would ask for is the actual plat that
6 is going to be recorded. If -- one of the elements we
7 look at is to make sure all of the potential demands
8 associated with the subdivision are accounted for. So if
9 there are changes to the plat after we issue the
10 certificate, it can invalidate the certificate and the
11 applicant would have to start over with the new
12 application.

13 Q. Okay. You also talked about the designation
14 of assured water supply and that's one of the options that
15 Voyager Water had. How is a designation of assured water
16 supply different from a certificate?

17 A. The certificate is tied to a specific plat and
18 for that plat and that piece of land only. The
19 designation covers the water provider for the system in
20 its entirety.

21 One of the key differences between the two is,
22 as a water provider builds out within their service area,
23 there are other associated demands that they will be
24 serving which do not have or are not accounted for under
25 the assured supplied purposes. If it does not meet the

1 definition of a subdivision under the Department of Real
2 Estate guidelines, which is six or more lots, we do not
3 review it for assured supply purposes. Contrasting that
4 with a designated provider, their system in its entirety,
5 all of their deliveries, meets the assured supply
6 criteria.

7 Q. So is the designation then acquired by the
8 water company?

9 A. That's correct, whereas, yes, in contrast, the
10 certificates are acquired by the individual landowner
11 and/or developer.

12 Q. How else does the designation differ from the
13 certificate of assured water supply?

14 A. As I stated, the system overall meets all of
15 the assured supply criteria. So, for example, meeting the
16 consistency goal requirement, if the provider became
17 a member of the CAGR D as a member area, all of the
18 deliveries in that water provider would be accounted for.
19 Whereas the water company would not have to do the
20 lot-by-lot reporting in breaking it down by what areas are
21 actually enrolled in the GRD and what are not.

22 Q. Then how does the replenish -- how do the
23 replenishment costs get paid?

24 A. By contrast, the designated provider, those
25 costs are applied directly to the system overall. So the

1 owner of the water company, the water company or the city
2 or town has to pay those replenishment fees, whereas with
3 the certificates, it is the individual lot owner that has
4 to pay the fees.

5 Q. Thank you.

6 You had mentioned that, in the event that a
7 subdivision plat is changed after a certificate of assured
8 water supply is issued, that plat might have to go back
9 through the certificate process again, is that correct?

10 A. That's correct.

11 Q. And why is that?

12 A. We -- it depends on the detail, level of the
13 change, but in most cases the plats are changed to a
14 significant degree where that impacts the demand
15 estimates. So we have to rereview to make sure that the
16 water is physically available to the subdivision in
17 addition to making sure it is also consistent with the
18 goal and with the plan.

19 Q. I have a belated question then. In the event
20 that a piece of -- you said a certificate of assured water
21 supply is issued to a subdivision plat owner and the owner
22 of that property. If that property changes hands, if it
23 is sold off as a parcel or a block to a new owner, what
24 happens to the certificate that has been issued?

25 A. If the new owner has more than six or more

1 lots, the original certificate for that area is invalid
2 and the new owner has to come back and obtain a new
3 certificate of assured water supply. It is tied not only
4 to the specific plat, it is also tied to the ownership.
5 So if any of the conditions change, the certificate is
6 invalid and a new certificate must be obtained.

7 Q. The Corporation Commission decision in
8 conditionally approving the CC&N for Voyager's area first
9 by one year and then extending it for another ten months,
10 it requires that the certificate of assured water supply
11 be obtained within that one year or one year plus 18 month
12 period.

13 Based on your experience managing the assured
14 water division at ADWR, is that one year or one year and
15 18 month period a reasonable time period that you would
16 usually see for a subdivider or a developer of a property
17 of this size to be able to get back to -- to get a
18 certificate?

19 A. In most cases it is not. For the smaller
20 subdivisions of, you know, say 50 lots or less, the
21 certificate can be issued and most of those projects can
22 be completed in a fairly short time frame. But for large
23 master-planned communities such as this one, I am looking
24 at the analysis here, over 1200 lots, the buildout period
25 on that would probably be, you know, a 10- to 15-year time

1 frame.

2 As I stated earlier, any time, in most cases,
3 large projects like that, the actual ultimate builder who
4 has to get the lot sales approved through the Department
5 of Real Estate is not the master developer. And so every
6 time one of the pieces of property changes hands and a
7 developer obtains any number of lots, they would have to
8 obtain a new certificate of assured water supply in order
9 for them to be able to complete the public report at the
10 Department of Real Estate.

11 Q. If the time frame to complete the development
12 takes longer than the ten years that is given in the
13 analysis of assured water supply, how does ADWR do that?
14 How --

15 A. By mutual written agreement we can, with the
16 developer, extend that time frame. In those cases, what
17 we would look to see is if they have made any progress of
18 what the likelihood of the progress continuing and the
19 project moving forward.

20 We would not as a matter of routine
21 continually extend those for an indefinite period of time
22 because there may be other developers in the area who are
23 ready to move today but may have a supply issue because of
24 the analysis information being in place.

25 Q. So would they have to come back with ADWR for

1 approval or hearing? What would be the process?

2 A. It would be a submittal. It would be a
3 letter, just a letter request.

4 MS. SAVEL: Okay, okay.

5 All right. Mr. Dunham, I don't have any more
6 questions for you.

7 ALJ WOLFE: Thank you.

8 Mr. Ronald?

9 MR. RONALD: Thank you, Your Honor.

10

11 CROSS-EXAMINATION

12 BY MR. RONALD:

13 Q. Mr. Dunham, this analysis of assured water
14 supply, is this open to any developer to apply to get
15 this?

16 A. Yes.

17 Q. And have you seen other cases where developers
18 have asked for this?

19 A. Yes.

20 Q. And is this a, this method of having
21 individual developers come forward to get their
22 certificate of assured water supply, is that a method that
23 ADWR has used in the past?

24 A. Yes. Again, we are required to issue a
25 certificate to the landowner. So once the property

1 changes hands and the actual home builder, the final
2 entity that will be marketing the lots, they need to have
3 the certificate in their name.

4 MR. RONALD: No further questions, Your Honor.

5

6

EXAMINATION

7 BY ALJ WOLFE:

8 Q. Good afternoon, Mr. Dunham. And again I want
9 to thank you on the record for coming and testifying
10 today. We really appreciate it.

11 A. You are welcome.

12 Q. I had a question about the difference between
13 a certificate of assured water supply and a designation.
14 I understand that the designation covers the entire
15 system.

16 My question goes to the criteria for obtaining
17 a designation of assured water supply as compared with the
18 criteria for a certificate obtained by a developer.

19 A. All five criteria that we mentioned earlier
20 are still in place. So the continuous, legal and physical
21 availability; consistency with goal, consistency with the
22 plan. And the financial capability in the case of a
23 designation, the financial capability is on the water
24 provider instead of the landowner, developer. And, again,
25 maintaining the designation, we also require that the

1 compliance with ADEQ's water quality requirements are
2 maintained throughout the life of the designation.

3 Q. Okay. Is the adequacy more stringent, are the
4 adequate requirements more stringent for a designation
5 that covers an entire system?

6 A. I am sorry?

7 Q. The availability. I am sorry.

8 A. Sorry. The adequacy program, everything
9 outside of the AMA I get confused.

10 The availability is the same within the Tucson
11 AMA. If it is a groundwater system, the depth of water at
12 the 100-year period is allowed to go down to 1,000 feet.
13 So that is not any different for the certificate or for
14 the designation.

15 Q. Maybe this is a technical question. It seems
16 to me that, if the developer is applying for a
17 certificate, and you have to see the plat, you would know
18 what kind of uses there would be for the water and would
19 be able to estimate how much water would be needed.

20 A. That's exactly the need for the detailed plat,
21 for the certificate.

22 Q. How do you determine whenever you have,
23 whenever you are looking at a designation for assured
24 water supply, how do you determine how much water will be
25 needed by the system?

1 A. What we do is we take a look at their current
2 demands, so any water that is being currently served to
3 their customers. On top of that, they are required to
4 provide to us any -- all of the committed demands. And
5 that would be all of the customers they have agreed to
6 serve and recorded plats that are yet to be developed so
7 they are not actually receiving water. And then we are
8 required to estimate at least two years' worth of growth
9 and what those associated demands would be. In most cases
10 we rely on the historical growth rates to come to that,
11 that estimate.

12 And so using those three elements, we project
13 out what two, three, four, five years' worth of demand
14 would come down the line. We don't have specific detailed
15 plats to look at. So, again, we look at the total
16 historical water use.

17 And because in most cases they are using
18 groundwater, the provider is required to report their
19 actual pumping and use rates even if they are not
20 designated. As we move into the future with the
21 designated provider, they are required to give us a little
22 more detail about their actual use. And that's one of the
23 jobs of my office, is to make sure that those growth rates
24 and use rates are within what we projected under their
25 designation.

1 Q. And then the holder of a designation makes the
2 yearly reports under this CAGRD?

3 A. If they are a member service area, that's
4 correct.

5 Q. Okay.

6 A. We would regulate their entire water uses for
7 the system. As a designation you may have a provider
8 other than the groundwater. GRD would only be concerned
9 about the groundwater use.

10 Q. Would it be more difficult for, say for
11 example, Voyager Water Company to get a designation of
12 assured water supply than having the developers come in
13 and get certificates?

14 A. Yes and no. One of the primary issues that we
15 face with private water companies is in most cases they
16 are relying on the use of groundwater. To become a
17 designated provider, they actually are not allowed to use
18 groundwater. They have to be 100 percent renewable
19 supplies.

20 If you become a member service area and are a
21 private utility, we have had difficulties in having water
22 companies be able to show enough financial capability to
23 be able to pay the associated GRD replenishment costs. So
24 in that case it is more difficult. But the requirements
25 overall for either certificate or for a designation are

1 the same.

2 Q. Okay. And just one last question. If you
3 know, has Voyager applied in the past for a designation of
4 assured water supply?

5 A. I am not aware of any such application.

6 ALJ WOLFE: Okay, thank you.

7 Redirect?

8

9

REDIRECT EXAMINATION

10 BY MS. SAVEL:

11 Q. Couple questions, Mr. Dunham. Why would it be
12 harder for the small private water company to have the
13 financial capabilities to establish the designation?

14 A. Again, the way the GRD is structured, they
15 have two member types. You are either a member land which
16 is associated with certificates, or you are a member
17 service area. Currently there is no method for the GRD to
18 be able to actually collect any of the costs associated
19 with replenishment from the end user, from the property
20 owner in the case of the certificates. And so that cost
21 falls squarely on the water provider to pay for that.

22 We have had -- the experience that we have had
23 is that it has been difficult for the private utilities to
24 be able to come up with, either through a rate structure
25 or as a pass through cost, to be able to directly account

1 for that replenishment cost and cover the needed cost for
2 that.

3 Q. One last question. In the setting of the
4 certificate of assured water supply, does ADWR have a
5 preference as to whether they would rather get an
6 application for the certificate from the master developer,
7 from the eventual subdivider, from the even smaller
8 property owner? What would be the preference, if there
9 was a preference?

10 A. Our preference would be, if it is a large
11 master-planned community, that the master developer obtain
12 an analysis of assured supply and then the subsequent home
13 builders that actually market the lots will obtain the
14 certificates.

15 Just from a logistics workload standpoint,
16 having to reissue certificates is very cumbersome.
17 Currently anywhere, depending on the month when we do the
18 analysis, anywhere from 40 to 60 percent of our workload
19 is reissuance of certificates of assured water supplies to
20 subsequent owners.

21 MS. SAVEL: Thank you. Thank you very much,
22 Mr. Dunham.

23 ALJ WOLFE: Thanks.

24 Anything further?

25 MR. RONALD: Nothing further, Your Honor.

1 ALJ WOLFE: Okay. Thank you for your
2 testimony today.

3 (The witness was excused.)

4 ALJ WOLFE: Ms. Savel?

5 MS. SAVEL: I would like to call Mark Weinberg
6 with WPI.

7 MARK WEINBERG,
8 a witness herein, having been first duly sworn by the
9 Certified Court Reporter to speak the truth and nothing
10 but the truth, was examined and testified as follows:

11

12 DIRECT EXAMINATION

13 BY MS. SAVEL:

14 Q. Mr. Weinberg, if you state your name and
15 address.

16 A. My name is Mark Weinberg. My address is 2200
17 East River Road, Suite 115, Tucson, Arizona.

18 Q. And who do you work for?

19 A. Diamond Ventures.

20 Q. How are you associated with WPI and Voyager
21 Water Company in this application?

22 A. WPI Kolb and I10 is a limited liability
23 company that is managed by Diamond Ventures.

24 Q. And what is your job in this?

25 A. I am vice president of development for Diamond

1 Ventures and project manager for -- of this Voyager
2 project.

3 Q. How long have you been working on the Voyager
4 project?

5 A. I have been working on it about three years.
6 We acquired the property midyear, 2001.

7 Q. Now, before you began working with Diamond
8 Ventures, I understand that you had some experience
9 working in a water company. Could you give us some
10 information about that?

11 A. I -- 20 years ago, actually in 1981, I was
12 hired to manage a small water company, Foothills Water
13 Company, and also the Altman Company. And I managed
14 Foothills Water, which was subsequently acquired by Canada
15 Hills Water Company, for about 12 years. I managed the
16 water company from 1981 until 1993 when it was acquired by
17 the town of Oro Valley.

18 Q. And as the manager what was your job in
19 managing the water company? What did you do? Everything?

20 A. Well, I did, I managed the people that managed
21 the company, dealt with the issues related to providing
22 water service to customers, providing new installations to
23 developers, just devoted everything that you could do in
24 the management of a small utility company.

25 Q. And that company was when it was regulated by

1 the ACC?

2 A. It was regulated by the ACC. When I started
3 it had 400 customers and when I left we had 6,000. So it
4 was, there was quite a learning curve for me in those
5 years.

6 Q. Well, let me turn to the development that we
7 are talking about today. You say that you have been
8 involved with the project for three years. What is your
9 estimate, as the developer, of your portion of the
10 property? How much longer do you anticipate being
11 involved in the Voyager project?

12 A. Well, we are, as I mentioned, we acquired the
13 property, I believe, in June of 2001. We initiated a
14 rezoning, the rezoning process, a few months later. We
15 had hired a consultant team.

16 There is quite a lot involved in rezoning the
17 piece of property, especially in the City of Tucson. You
18 have to do environment and biological studies,
19 archeological studies, master water reports, master sewer
20 reports, other utility studies, traffic impact analysis,
21 this whole litany and of tests and studies you have to put
22 together before you can even apply for rezoning. So it
23 took us about eight months to put the studies together to
24 be in a position to apply for rezoning of the property.

25 And once we applied to the City of Tucson, the

1 rezoning took almost a year to accomplish. In May of this
2 year, we rezoned the property and got a successful vote by
3 the Mayor Council and rezoned the property for 900 lots.

4 Q. Do you have any other zoning entitlement or
5 development entitlement that you still have to go through
6 with the City of Tucson?

7 A. Well, once the property is zoned, then you are
8 at a point where you know how many lots that you can place
9 on the property and then it is time to take the property
10 from a zoning entitlement stage to a development stage.

11 So at that point in May, when we knew that we
12 were zoned for a 900-lot project, we went out to the
13 marketplace and we talked to home builders to get a sense
14 of what builders in Tucson were interested in the
15 property, what type of product they would like to put on
16 the property, what size lots they would like to see
17 designed on the property. And quite honestly, that
18 process takes a long time and we are still in the process
19 now.

20 We have identified three builders that would
21 like to develop in the Voyager project. They have come up
22 with five different lot sizes and we are in process now of
23 negotiating contracts with them so that we can have firm
24 commitments from builders for certain lot sizes and
25 certain -- in different parts of the property so we can

1 start a plat.

2 Q. Now, you then are not, WPI will not be
3 building homes then on the property?

4 A. That's correct. We do everything but build
5 homes. We do the land acquisition, the entitlements, the
6 zone -- do the platting, set up the master covenants and
7 restrictions, the design guidelines. We build all the
8 master infrastructure, off-site water, sewer lines,
9 booster stations, reservoirs. We build a
10 seven-and-a-half-acre on-site park, landscaping, and we
11 will even plat the individual subdivisions. But at that
12 point we sell them to home builders and they do their own
13 lot development and build their own homes.

14 Q. How long do you expect this, the process of
15 getting to the point where you sell them to the individual
16 subdividers and builders, to take?

17 A. At the point we are now, which is negotiating
18 contracts with builders, as soon as we finalize this
19 process, which is likely to take another couple of months,
20 and we know exactly the number of lots each builder would
21 like and which village they would like these lots and what
22 size those lots are, then we will begin the platting
23 process.

24 The platting process for a project of this
25 size, which is roughly 700 lots, will take about four

1 months to plat for the engineers to prepare the plans.
2 And once the plan is prepared, it will be submitted to the
3 City of Tucson. And generally it takes about six months
4 for the City to review the plat and for the developer to
5 get all the approvals they need to be in a position to
6 move forward. Let me clarify that.

7 In the six-month process would be the time
8 frame it takes to get an approved tentative plat. At the
9 point we get an approved tentative plat, we can then start
10 designing the subdivision improvement plans, which include
11 the design of the streets, the design of the on-site
12 sewers, the water system, utility system, the park, and
13 then prepare the final plat so that a final subdivision
14 plat can be recorded. All the master and subdivision
15 infrastructure plans can be approved by agencies having
16 jurisdiction and construction can begin.

17 Q. And is the final subdivision plat that is
18 recorded, that is what you take in hand to ADWR, is that
19 correct?

20 A. Yes.

21 Q. Okay. So we are looking at three months for,
22 three months for negotiation, seven months for tentative
23 plat preparation, six months to run it through --

24 A. And then --

25 Q. -- the process?

1 A. These are approximate dates. It could take
2 more or less depending how quickly we can get the plans
3 done, how receptive the City of Tucson staff is and the
4 type of job we do preparing the plans. If we do a good
5 set of plans, it takes less time; if we are a little
6 sloppy, it takes more time.

7 Q. After you get the tentative plan approved, how
8 many months or so to get the improvement plans done?

9 A. Improvement plans for a project of this size,
10 if we presell all the lots, probably another three months
11 to prepare. And each agency has its own time frames.

12 You know, the water company takes probably
13 less time because it is smaller. The wastewater company,
14 it is a regional company and probably a little longer. So
15 it depends on the agency. But, again, to get all the
16 approvals for a project this size will probably likely
17 take about six months.

18 Q. Okay. So my count is that's 10, 16, 19, 25
19 months that you are looking at after your rezoning is
20 approved to be able to get to the point you can start, you
21 can do your final plat?

22 A. It should take less than that. I am giving
23 you a time frame, time frames, beginning to end. But a
24 lot of these plans overlap.

25 Q. Overlap.

1 A. If you are preparing the plat and you believe
2 the plat is going to get approved, then you will start on
3 the improvement plans before you get final approval. So
4 you try and condense the process as much as you can. It
5 will probably take another 12 to 18 months to get all the
6 approvals that I have just outlined.

7 Q. Now, Voyager Water Company has requested that
8 the ACC accept the analysis as -- to establish that there
9 is adequate water supply instead of asking either the
10 water company or the master developer to get a certificate
11 or, in the alternative, to have the individual subdividers
12 get the certificate at the time that they are doing
13 subdivision platting.

14 From your perspective as master developer, do
15 you have any objection to that?

16 A. No, I don't.

17 Q. And why would that be beneficial to you?

18 A. As you have noted earlier today, we have an
19 analysis of assured water supply now. As we plat the
20 property and sell it to home builders, they are going to
21 have to apply for the Department of Water Resources to get
22 the final certificates anyway. So it seems like a logical
23 way to develop the property.

24 Q. They also -- we have also requested that the
25 ACC remove the condition that we get approvals to

1 construct from ADEQ for the entire property and have it be
2 done on a subdivision-by-subdivision or parcel
3 development-by-parcel development basis.

4 Do you have any objection as one of the master
5 developers to that idea?

6 A. No. And actually it is more practical do it
7 that way. You know, for this particular project, as I
8 mentioned earlier, we received our rezoning approval in
9 May. As soon as we knew the number of lots that we were
10 entitled to develop, we started to design.

11 We met with the water company's master -- the
12 water company's engineering consulting firm. They did a
13 water modeling study to determine the size of water mains
14 that need to be constructed by the water company that
15 serve our development, the size of reservoir that needs to
16 be constructed to provide not only water service but fire
17 flow capacity, the size of the water booster station. And
18 once they completed that study, we hired them to design
19 the off-site waterline, which is the certificate that you
20 presented earlier today.

21 So we have designed the off-site waterline.
22 The reservoir has been sized in the design, designed by
23 the company last week. The booster station has been sized
24 and designed by the water company last week, submitted to
25 the health department for approval.

1 But all the -- there are six and a half miles
2 of streets in this project. So to design every single
3 waterline and get certificates to construct for every
4 single waterline, to be able to do that now is
5 unrealistic. And to anticipate that you have gotten every
6 single one, you didn't miss one, it is more reasonable, I
7 think, to require that the company, that the developer is
8 moving forward designing water systems as it can and is
9 showing progress in working towards completion of a phased
10 project than requiring every single certificate to file.

11 Q. One of the questions is -- one of the options
12 that Voyager Water Company has was to either get a
13 designation of assured water or certificate of assured
14 water supply. And Voyager is moving towards the idea of
15 having individual subdividers get a certificate instead of
16 a designation.

17 Were you involved at all in that discussion of
18 which was better?

19 A. No, I wasn't. But having managed a water
20 company, I recognize that I don't believe water companies
21 can pass through the cost of getting a designation. So
22 generally, if a water company is acting as a water company
23 rather than as a water company slash developer, they would
24 rather have landowners get certificates for the land they
25 own rather than have the water company get a designation

1 for all the land in its certificate.

2 Q. And that is because the certificate is better
3 because, from your experience --

4 A. Well, I don't know if it is better. I think
5 it accomplishes the same thing. The water company, if it
6 can't recapture cost from the designation and it doesn't
7 own the land benefiting from the designation, there is
8 really no incentive for the water company to get a
9 designation.

10 MS. SAVEL: I understand. I don't have any
11 additional questions, Mr. Weinberg.

12 ALJ WOLFE: Thank you.

13 Mr. Ronald?

14 MR. RONALD: Thank you, Your Honor.

15

16 CROSS-EXAMINATION

17 BY MR. RONALD:

18 Q. Mr. Weinberg, one of the alternative
19 propositions that Voyager put forth was that, if the
20 certificate of assured water supply is not required by the
21 ACC from Voyager but rather individual developers, that
22 these developers would have to submit their own
23 certificate of assured water supply to the ACC.

24 Would you be willing to do that?

25 A. Yes. I mean, yes, we would be willing to do

1 it or subsequent buyers of land that we know.

2 Q. What would be your time frame for that?

3 A. Well, it really depends how quickly the
4 project sells. It looks like, sitting here today, that we
5 are going to sell this entire project at one time and it
6 won't be phased over a couple of years.

7 So I think it would be, my best guess is that
8 the platting and subsequent sales to builders will be
9 accomplished over the next couple of years. When a
10 builder buys the land and applies for a certificate, I
11 think it takes about four months to process through
12 Department of Water Resources. It is two; two, three
13 years is a reasonable time frame.

14 Q. If there was a requirement that you submit
15 those certificates within two years, do you think that
16 would be reasonable from your perspective?

17 A. I think it would be, I think it is achievable.
18 And we would have to work hard to meet that time frame. I
19 think three years is reasonable. I think two years may be
20 a little aggressive. But if it is two years, then we will
21 work harder to try and accomplish it.

22 Q. We talked about applying for the certificate
23 after the rezoning has happened. As far as the approval
24 to construct from ADEQ, as the developer, do you also want
25 the rezoning to be done before you proceed with applying

1 for that approval to construct?

2 A. Yes. We can only apply for approvals to
3 construct for water lines that are designed. And so it is
4 only after the project is rezoned that we know where the,
5 you know, what the size of the off-site line needs to be
6 and can determine where that off-site line can be located.
7 So we can design the off-site line, but then it is the
8 platting process after the rezoning that the sizing and
9 location of all the on-site lines can be determined and we
10 need approvals to construct then filed with the Pima
11 County Department of Health.

12 MR. RONALD: No further questions, Your Honor.

13

14

EXAMINATION

15 BY ALJ WOLFE:

16 Q. Good afternoon, Mr. Weinberg.

17 A. Good afternoon, Judge Wolfe.

18 Q. So, from your testimony, talking about
19 approvals to construct from the Pima County Department of
20 Health, am I to surmise you wouldn't get approvals to
21 construct from ADEQ at all?

22 A. We submit to PDEQ, Pima Department
23 Environmental Quality.

24 Q. And they act as an agent?

25 A. I believe so, yes.

1 Q. And you weren't present at the hearing for the
2 request for an extension of the CC&N, it took place in
3 2001, were you?

4 A. No, I was not.

5 ALJ WOLFE: That's all the questions that I
6 have.

7 Redirect?

8 MS. SAVEL: None, Your Honor.

9 ALJ WOLFE: Thank you for your testimony
10 today. You are excused as a witness.

11 THE WITNESS: Thank you.

12 (The witness was excused.)

13 ALJ WOLFE: Does that complete the
14 presentation of your case today?

15 MS. SAVEL: Yes, it does, Your Honor. Thank
16 you.

17 ALJ WOLFE: Thank you.

18 Would you like to call your witness?

19 MR. RONALD: Yes, Your Honor. Staff calls Jim
20 Fisher.

21 ALJ WOLFE: Before I do that, did you want to
22 have Exhibit A-1 admitted to the record? It has been
23 docketed so it is not necessary. It is up to you.

24 MS. SAVEL: I have it right here and the court
25 reporter labeled it so might as well.

1 ALJ WOLFE: And does Staff have an objection?

2 MR. RONALD: No, Your Honor.

3 ALJ WOLFE: A-1 is admitted then. And you
4 mentioned you had something marked A-2. Was that
5 something that you wanted to have admitted, also?

6 MS. SAVEL: Certainly, Your Honor. Thank you.

7 ALJ WOLFE: Okay. I forget what that was.
8 Can you identify it?

9 MS. SAVEL: That was the Pima County
10 Department of Environmental Quality certificate of
11 approval to construct water and/or wastewater facilities
12 for Voyager Water Company.

13 ALJ WOLFE: Okay. Is there any objection to
14 that being admitted?

15 MR. RONALD: No, Your Honor.

16 ALJ WOLFE: A-2 is admitted.

17

18 JIM FISHER,
19 a witness herein, having been first duly sworn by the
20 Certified Court Reporter to speak the truth and nothing
21 but the truth, was examined and testified as follows:

22

23 DIRECT EXAMINATION

24 BY MR. RONALD:

25 Q. Please tell us your name and business address.

1 A. My name is Jim Fisher. My business address is
2 Arizona Corporation Commission, Utilities Division, 1200
3 West Washington, Phoenix, Arizona.

4 Q. And what are your duties at the Corporation
5 Commission, Mr. Fisher?

6 A. Part of my duties as an executive consultant
7 are the analysis and recommendations on requests for
8 extensions of service territory for water and wastewater
9 as well as original certificates.

10 Q. And in your duties did you review an
11 application from Voyager Water Company to modify or amend
12 a Commission Decision?

13 A. Yes, sir, I did.

14 Q. And specifically that was Decision No. 64406?

15 A. Subject to check, yes, it was.

16 I should believe my own attorney, shouldn't I?

17 Q. Do you have any general comments about the
18 request?

19 A. Yes, I do.

20 Q. And what are those?

21 A. And I want to apologize to Judge Wolfe as far
22 as I understand her confusion as far as the request is
23 multi-part.

24 The general thrust Staff agrees with, in that
25 we have a decision and we have a company that needs to

1 comply with a number of matters. And we agree with the
2 idea that, with the interwoven regulatory fabric that we
3 have with the Department of Water Resources, a master
4 developer such as the requester, with the applicant, has
5 submitted an analysis of assured water supply, and it
6 seems to be our review of the code and their testimony,
7 our understanding of it, it makes sense to accept that.

8 As to the certificate of assured water
9 supplies, those are normatively submitted by the
10 subdivider. And we would disagree.

11 So we would agree with number one on the
12 request. We would disagree to a certain regard on number
13 two, in that totally eliminating the cause, the
14 certificate of assured water supply, may not be
15 appropriate. It is standard operating procedure. It
16 should be continued.

17 As to number three, I would have to review,
18 review the verbiage on that again. But I believe, if I
19 disagree with number two -- it is just an incredible
20 matrix we have here -- I agree with number three. I agree
21 with number three that, as the master developer will not
22 be obtaining the cost, the certificate of assured water
23 supply should be provided by the appropriate subdivider as
24 was outlined by the Department of Water Resources'
25 witness.

1 As to number four, ADEQ approvals to construct
2 are normatively provided with the associated main
3 extension agreement. I would anticipate that this, like
4 any other development, is done in phases and, as those
5 phases are ripe for submittal for approval to ACC Staff
6 for the main extension agreement, that it be submitted in
7 that juncture and that there be no time frame requirement
8 on main extension agreements and the approvals to
9 construct.

10 That leads us to number five, which is the one
11 Staff really wrestles with. Total elimination of any time
12 frames is very difficult for Staff to recommend. In part
13 and parcel of review and analysis and recommendation of a
14 certificate of convenience and necessity is the necessity.

15 Voyager Water came in to the ACC, made
16 representations that there was a need for this, for the
17 extension of their process. Perhaps we got ahead.
18 Perhaps we didn't understand the time frames entirely. We
19 have already provided one significant continuance or
20 extension of time to comply. And I believe that providing
21 an additional two years from this date would be another
22 significant time to comply.

23 Testimony from the developer indicates that
24 would be really pressing for their time frames on putting
25 the burden on the subdividers to obtain and submit the

1 certificates of assured water supply.

2 So I don't want to toss a coin as I sit here
3 testifying in front of you, Your Honor, but I know that
4 two years after an initial extension has been recommended
5 before, and Staff always takes comfort in some sort of
6 standard operating procedure.

7 By the same token, I don't want to prejudice
8 the applicant and the developer. Obviously, there may
9 have been a misunderstanding as to whether or not the
10 initial need was sufficiently understood by both the
11 Commission, the applicant and the developer.

12 So I would like to see the certificates of
13 assured water supply provided within two years of
14 January 2003 at the outset. But if the Commissioner or, I
15 am sorry, if the Commission and Hearing Officer does not
16 adopt that, I wouldn't lose any sleep.

17 So those are my general comments.

18 Q. Do you have anything else you want to add,
19 Mr. Fisher?

20 A. No, I don't.

21 MR. RONALD: No further questions, Your Honor.

22

23 EXAMINATION

24 BY ALJ WOLFE:

25 Q. Good afternoon, Mr. Fisher. At the hearing,

1 were you the witness at this hearing?

2 A. Probably. I am not sure. I believe so.

3 Q. Okay. The company didn't object to your
4 recommendation at the hearing, did they, if you remember?

5 A. I don't believe -- subject to check, Your
6 Honor. Your Honor, I will accept your representation.

7 Q. And why did Staff recommend that these
8 compliance filings be made within 365 days of a decision?

9 A. As I explained previously, Your Honor, Staff
10 obviously takes comfort in having standard operating
11 procedure.

12 More importantly, an applicant needs to
13 establish that there is in fact a need. So we try and
14 recognize that need in some sort of normative planning
15 horizon and try and get all of that within the same
16 ratings or decision matrix.

17 It was our understanding that those
18 recommendations were okay at the time we made them and
19 that they were accepted and adopted by the Commission as
20 part of the initial decision.

21 Q. Does your acceptance of an analysis of assured
22 water supply -- or are you recommending that the
23 Commission accept the analysis of assured water supply in
24 lieu of the certificate of assured water supply by the
25 developers?

1 A. My recommendation would be that the Commission
2 accept the analysis of assured water supply in conjunction
3 with the later-submitted certificates of assured water
4 supply.

5 I believe we have run into a timing situation.
6 And I -- and the witness that was from the Department of
7 Water Resources obviously is subject matter expert. And I
8 think his testimony was very persuasive that it would be a
9 normative process for a master developer to obtain that
10 and that, as they spend so much of their workload on
11 transferring or reevaluation of certificates of assured
12 water supply when property changes hands, Staff wouldn't
13 want to push the Department of Water Resources to do yet
14 one more review and transaction that would result in the
15 same analysis.

16 Q. I note also in reviewing this decision that it
17 doesn't appear that Staff recommended any sort of rate
18 review as a result of this extension of the CC&N. Would
19 Staff normally recommend a rate review for an extension of
20 this size?

21 A. Staff normally does not recommend rate reviews
22 in association with extensions. As I sit here today, I am
23 not familiar enough with Voyager Water Company as it
24 exists today and how these 900 lots will affect it. I
25 think that it is pretty easy to say that in five years

1 there may be a different rate situation and having a
2 review of Voyager associated with that would be
3 appropriate. Staff normally recommends on a new CC&N that
4 there be a rate review.

5 ALJ WOLFE: Thank you.

6 Ms. Savel?

7 MS. SABEL: Thank you.

8

9 CROSS-EXAMINATION

10 BY MS. SABEL:

11 Q. Mr. Dunham testified that the analysis of
12 assured water supply is good for ten years from May 2002.
13 So ten years, to about May 2012. Split the difference
14 with me. How would you feel about -- I am just kidding.
15 Kind of.

16 So in other words, at May 2012, or coming up
17 to that time, if Mr. Weinberg and cohorts haven't managed
18 to get this thing up and running, off the ground to DWR
19 and show them why it is that they deserve to get their
20 groundwater quantity basically held for another period of
21 time, and he didn't sound too receptive to the idea of
22 repeat extensions, would Staff feel comfortable with
23 something a little more than two with the idea that we are
24 looking at an eventual horizon of ten years where ADWR is
25 going to have to relook at the whole analysis of assured

1 water supply they have established, the availability and
2 adequacy in place; not as short as two, not as long as
3 ten, something in that ballpark, especially since
4 Mr. Weinberg said that three would be, and I am used to
5 talking to developers and I know they like to hedge their
6 bets on time, but three would be probably ballpark there?

7 A. We were looking to see where he was at on the
8 time frame, because the -- Mr. Weinberg is very important
9 to this process. It is Voyager Water that came in and
10 made the representations, assured us that certain things
11 would be done within a certain period of time, that
12 certain conditions were okay.

13 That goes back to the need. I am not whetted
14 to two years, but I also have an Administrative Law Judge
15 who I know and respect and needs me to at least have an
16 opinion when I sit on the witness stand. So I have to
17 come up here with two years.

18 Am I whetted to it? Do I believe it needs to
19 be done? Probably not. These are very fact specific. By
20 the same token, we have to have some sort of process that
21 applicants recognize and can move forward with.

22 I believe the ten years you spoke of is
23 associated with the rule. I don't believe we have a
24 particular rule on that. So it is very fact specific and
25 it is associated with a particular decision.

1 If the Hearing Officer were to go along with
2 three years, I would understand that. And that would give
3 Voyager far greater latitude than other water companies in
4 similar situations have gotten, at least by 12 months. In
5 the scheme of things, is there a reason for that? Well,
6 quite possibly. So...

7 MS. SAVEL: Thank you, Mr. Dunham.

8 THE WITNESS: Fisher.

9 MS. SAVEL: Oh, Fisher.

10 THE WITNESS: That's okay. He has glasses.

11 MS. SAVEL: He has glasses and he is not here.

12 ALJ WOLFE: Redirect, Mr. Ronald?

13 MR. RONALD: No, Your Honor.

14 ALJ WOLFE: Thank you for your testimony
15 today, Mr. Fisher.

16 (The witness was excused.)

17 ALJ WOLFE: And that is your only witness
18 today?

19 MR. RONALD: Yes, Your Honor. Staff rests.

20 ALJ WOLFE: Okay. Before I move to closing
21 statements, I have a question to ask of counsel.

22 I sort of expected to have a witness for the
23 company available today to ask this question of. But this
24 pertains to the five-year rate review requirement.

25 Do you know whether the company would be

1 opposed to having, in conjunction with this extension and
2 amendment of the decision, a requirement that it file for
3 a rate review at the end of the time period, at the end of
4 the extension period?

5 MS. SAVEL: Judge Wolfe, I have no idea. But
6 if the judge feels that would be an appropriate thing to
7 do, to take a look at the rates again, I wouldn't sit here
8 and object to it on behalf of the water company either.

9 We are in the process of a financing submittal
10 with the ACC. And we will be in our -- and our financial
11 statements are currently under scrutiny by ACC financing
12 and accounting staff pretty serious and we are going
13 through some subsequent data requests and having a really
14 good time with that. That may be well a result of that
15 process as well.

16 So I can't say specifically. But if the Court
17 felt that was something that was necessary, I think that
18 the judge felt it was necessary, we would be okay.

19 ALJ WOLFE: I think that explains
20 Mr. Johnson's presence in the hearing room.

21 MS. SAVEL: Yes. Mr. Johnson has been one of
22 the --

23 ALJ WOLFE: Now, if there is nothing else
24 procedurally, we can move to closing statements.

25 Do you have a closing statement, Ms. Savel?

1 MS. SAVEL: Well, Your Honor, I think Voyager,
2 I stated Voyager Water Company's request, both -- either
3 the alternative would be, one, that we -- that the ACC
4 would accept the analysis.

5 The big request is, in lieu of a certificate
6 of assured water supply, but we understand Mr. Fisher's
7 position and it is not an unreasonable one, that, in the
8 alternative, the individual certificates be provided by
9 the subdividers. And we are happy that Staff agrees with
10 us on the approvals to construct to be provided with the
11 individual subdivisions.

12 And we understand the concern with the time
13 frame. And we don't want to change the way that the world
14 works completely, trying to adjust a little bit, but not
15 necessarily change everything. And we would be happy to
16 work with Staff to work out a time frame that is
17 appropriate and that the ALJ is comfortable with as well.

18 Appreciate the opportunity to try something
19 new and have a chance to bring Mr. Dunham in to talk about
20 some of these issues and to identify some of the concerns
21 that both the developer and the small water companies
22 have. Really do appreciate the ACC hearing us on those.
23 Thank you.

24 ALJ WOLFE: Mr. Ronald?

25 MR. RONALD: Thank you, Your Honor. Staff

1 continues to support the request to modify, with the
2 conditions outlined by Mr. Fisher.

3 ALJ WOLFE: Okay. Thank you very much for
4 your attendance here today. This matter is adjourned.

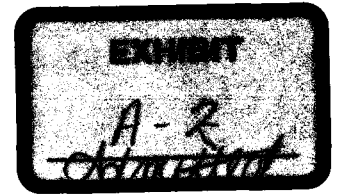
5 (The hearing concluded at 2:52 p.m.)
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1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF MARICOPA)
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6

7 I, COLETTE E. ROSS, Certified Court Reporter No.
8 50658 for the State of Arizona, do hereby certify that the
9 foregoing printed pages constitute a full, true and
10 accurate transcript of the proceedings had in the
11 foregoing matter, all done to the best of my skill and
12 ability.
13

14 WITNESS my hand this 26th day
15 of August, 2008.
16
17
18
19

20 Colette E. Ross
21 COLETTE E. ROSS
22 Certified Court Reporter
23 Certificate No. 50658
24
25



RED ROCK UTILITIES
APPLICATION FOR A CERTIFICATE OF
CONVENIENCE AND NECESSITY

DOCKET No. WS-04245A-04-0184

HEARING EXHIBITS

SEPTEMBER 2, 2004

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Certificate of Good Standing

Exhibit 2

Corporate Resolution by Board of Directors of Diamond Ventures, Inc. authorized to seek CC&N and Pinal County franchise

Exhibit 3

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Exhibit 4

Legal Description and Depiction of Red Rock Utilities L.L.C. Wastewater CC&N Area

Exhibit 5

Pinal County Water Utility Franchise

Exhibit 6

Pinal County Wastewater Utility Franchise

EXHIBIT

1

STATE OF ARIZONA



Office of the CORPORATION COMMISSION

CERTIFICATE OF GOOD STANDING

To all to whom these presents shall come, greeting:

I, Brian C. McNeil, Executive Secretary of the Arizona Corporation Commission, do hereby certify that

*****RED ROCK UTILITIES, LLC*****

a domestic limited liability company organized under the laws of the State of Arizona, did organize on the 31st day of July 2002.

I further certify that according to the records of the Arizona Corporation Commission, as of the date set forth hereunder, the said limited liability company is not administratively dissolved for failure to comply with the provisions of A.R.S. section 29-601 et seq., the Arizona Limited Liability Company Act; and that the said limited liability company has not filed Articles of Termination as of the date of this certificate.

This certificate relates only to the legal existence of the above named entity as of the date issued. This certificate is not to be construed as an endorsement, recommendation, or notice of approval of the entity's condition or business activities and practices.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Arizona Corporation Commission. Done at Phoenix, the Capital, this 1st Day of September, 2004, A. D.




Executive Secretary

By 

EXHIBIT


2

CERTIFICATE OF SECRETARY

RED ROCK UTILITIES, LLC

The undersigned, the duly appointed and acting secretary of Diamond Ventures, Inc., an Arizona corporation, the sole member of Red Rock Utilities, LLC, an Arizona limited liability company (the "Company"), hereby certifies that attached hereto is a true, correct and complete copy of the Consent of the Member of Red Rock Utilities, LLC, dated July 20, 2004, and that the same has not been amended.

Dated: August 31, 2004.



Debra Parsons, Secretary

**CONSENT OF THE MEMBER
OF RED ROCK UTILITIES, LLC**

The undersigned, the sole member of Red Rock Utilities, LLC, an Arizona limited liability company (the "Company"), hereby consents to and approves of the actions set forth in the following resolutions:

RESOLVED, that the Arizona Department of Water Resources' Initial Request to Establish a New Service Area Right and Notice of Intent to Serve for Private Water Companies executed by Mark Weinberg in his capacity as the vice president of Diamond Ventures, Inc., an Arizona corporation ("DVI"), in DVI's capacity as the sole member of the Company, is hereby approved by the Company's sole member.

RESOLVED, that Mark Weinberg in his capacity as the vice president of DVI, in DVI's capacity as the sole member of the Company, is authorized and directed to take any and all additional actions that may be necessary or appropriate in connection with the foregoing, and that all such actions taken or to be taken on behalf of the Company, are hereby approved.

Dated effective as of July 20, 2004.

Member:

Diamond Ventures, Inc.,
an Arizona corporation

By: 

Name: DAVID GOLDSTEIN

Its: PRESIDENT

EXHIBIT

3



**LEGAL DESCRIPTION
RED ROCK UTILITIES L.L.C.
WATER C.C. & N. AREA**

Section 4:

The Southwest Quarter of Section 4, Township 10 South, Range 10 East, Gila and Salt River Meridian, Pinal County, Arizona, lying Easterly of the Easterly right-of-way line of Interstate 10 and the Union Pacific Railroad right-of-way; and

That portion of the Southwest quarter of the Southwest quarter of Section 4, Township 10 South, Range 10 East, Gila and Salt River Meridian, Pinal County, Arizona, described as follows:

BEGINNING at the Southwest corner of said Section 4;

Thence North 00° 32' West, along the West boundary of said Section 4, a distance of 679.90 feet;

Thence North 76° 49' East, a distance of 710.30 feet to a point on the Southwesterly boundary of that certain highway known as Interstate 10 as presently located;

Thence Southeasterly along the Southwesterly boundary of said Interstate 10 following the curves and tangents thereof, a distance of 820.00 feet, more or less, to the point of the intersection of the Southwesterly boundary of Interstate 10, with the Northerly boundary of that certain road known as Sasco Road as presently located;

Thence South 66° 50' West along the Northerly boundary of Sasco Road, a distance of 185.00 feet, more or less, to the point of intersection of the Northerly boundary of Sasco Road with the South boundary of said Section 4;

Thence South 89° 51' West along the South boundary of said Section 4, a distance of 810.00 feet, more or less, to the Southwest corner of said Section 4 and the POINT OF BEGINNING.



Section 5:

The Southeast Quarter of Section 5, Township 10 South, Range 10 East, Gila and Salt River Meridian, Pinal County, Arizona, except any portion lying within the right-of-way of Interstate 10; and

EXCEPTING that portion described as follows:

BEGINNING at the Southeast corner of said Section 5;

Thence Westerly along the Southern boundary of said Section 5, a distance of 512.29 feet;

Thence Northerly and parallel to the Eastern boundary of said Section 5, a distance of 16 feet;

Thence Easterly and parallel to the Southern boundary of said Section 5, a distance of 512.29 feet;

Thence Southerly along the Eastern boundary of said Section 5, a distance of 16 feet to the **POINT OF BEGINNING**;

And **ALSO EXCEPTING** that portion of said Southeast Quarter lying north of and easterly of the following described line;

Commencing at the $\frac{3}{4}$ inch pipe being the Southeast corner of said Section 5;

Thence North 00° 00' 00" East, along the East line of the Southeast quarter of said Section 5, a distance of 931.43 feet to the **TRUE POINT OF BEGINNING**, said point being 1,751.75 feet South of a 2 inch open pipe which is the East quarter corner of said Section 5;

Thence South 88° 59' 52" West, a distance of 182.65 feet;

Thence North 06° 07' 46" West, a distance of 440.59 feet;

Thence North 00° 38' 48" West, a distance of 60.00 feet;

Thence North 89° 21' 46" West, a distance of 46.00 feet;

Thence North 01° 50' 17" West, a distance of 133.96 feet;

Thence North 16° 24' 02" West, a distance of 258.25 feet;

The
WLB
Group^{Inc}

Thence North 22° 35' 44" West, a distance of 960.32 feet to the POINT OF TERMINUS on the North line of the Southeast Quarter of said Section 5.

Section 8:

All of Section 8, Township 10 South, Range 10 East, Gila and Salt River Meridian, Pinal County, Arizona, Except the South One-Half of the Southwest Quarter thereof.

EXCEPTING any portion lying within the following described tract;

BEGINNING at the Northeast corner of said Section 8;

THENCE West along the North boundary line of said Section 8, a distance of 512 feet to a point;

THENCE South parallel with the East boundary line of said Section 8, a distance of 512 feet to a point;

THENCE East 512 feet to a point on the East boundary line of said Section 8;

THENCE North a distance of 512 feet to the POINT OF BEGINNING.

And ALSO EXCEPTING any portion lying within the following described tract;
The West 132 feet of the East 644 feet of the North 512 feet of Section 8, Township 10 South, Range 10 East of the Gila and Salt River Base Meridian, Pinal County, Arizona.

Section 9:

All of Section 9, Township 10 South, Range 10 East of the Gila and Salt River Meridian, Pinal County, Arizona, Except any portion thereof within right-of-way of Interstate 10 and the Union Pacific Railroad;

EXCEPT that portion described as follows:

Commencing at the Northwest corner of said Section 9;

Thence South 00° 10' 52" West along the West line of said Section 9, a distance of 431.07 feet to the intersection of the West line of said Section 9 and a line parallel to and 50.00 feet Southerly of the centerline of Sasco Road as it now exists;

Thence North 67° 19' 22" East, parallel to and 50.00 feet Southerly of the centerline of Sasco Road, a distance of 771.10 feet to the TRUE POINT OF BEGINNING;



Thence continue North 67° 19' 22" East, a distance of 200.00 feet;

Thence South 22° 40' 38" East, a distance of 150.00 feet;

Thence South 67° 19' 22" West, a distance of 200.00 feet;

Thence North 22° 40' 38" West, a distance of 150.00 feet to the TRUE POINT OF BEGINNING;

And ALSO EXCEPTING that portion described as follows:

Commencing at the Northwest corner of said Section 9;

Thence South 00° 10' 52" West along the West line of said Section 9, a distance of 431.07 feet to the intersection of the West line of said Section 9 and a line parallel to and 50.00 feet Southerly of the centerline of Sasco Road as it now exists;

Thence North 67° 19' 22" East, parallel to and 50.00 feet Southerly of the centerline of Sasco Road, a distance of 671.10 feet to the TRUE POINT OF BEGINNING;

Thence continue North 67° 19' 22" East, a distance of 100.00 feet;

Thence South 22° 40' 38" East, a distance of 150.00 feet;

Thence South 67° 19' 22" West, a distance of 100.00 feet;

Thence North 22° 40' 38" West, a distance of 150.00 feet to the TRUE POINT OF BEGINNING;

And ALSO EXCEPTING that portion described as follows:

Commencing at the Northwest corner of said Section 9;

Thence South 00° 10' 52" West along the West line of said Section 9, a distance of 431.07 feet to the intersection of the West line of said Section 9 and a line parallel to and 50.00 feet Southerly of the centerline of Sasco Road as it now exists;

Thence North 67° 19' 22" East parallel to and 50.00 feet Southerly of the centerline of Sasco Road, a distance of 971.10 feet to the TRUE POINT OF BEGINNING;

Thence continue North 67° 19' 22" East, 115.75 feet to a point on the westerly line of the Interstate 10 Red Rock Interchange right-of-way, being on a non-tangent curve, concave

The
WLB
Group

Westerly, the center of said curve bears South 75° 44' 03" West, a distance of 1045.92 feet;

Thence Southerly along said right-of-way line and the arc of said curve, through a central angle of 07° 17' 12", a distance of 133.02 feet to a point of non-tangency;

Thence South 67° 19' 22" West, a distance of 42.99 feet;

Thence South 22° 19' 22" West, a distance of 28.28 feet;

Thence south 67° 19' 22" West, a distance of 25.00 feet;

Thence North 22° 40' 38" West, a distance of 150.00 feet to the TRUE POINT OF BEGINNING.

And ALSO EXCEPTING the following described parcel:

COMMENCING at the Southeast corner of the Southeast quarter of said Section 9;

THENCE North 89° 56' 53" West along the South line of said Southeast quarter a distance of 58.87 feet to a point on the West right of way line of Interstate 10 and the POINT OF BEGINNING;

THENCE continue North 89° 56' 53" West, along said South line, a distance of 1,700.25 feet to the East line of an El Paso natural gas easement;

THENCE North 37°51'09" West along said East line a distance of 1,365.93 feet;

THENCE North 54°47'04" East a distance of 1,444.28 feet to said West right of way line;

THENCE South 35°22'56" East along said right of way line a distance of 856.29 feet;

THENCE South 35°22'45" East along said right of way line a distance of 1,494.12 feet to the POINT OF BEGINNING.

Section 10:

The west one-half of the Southwest Quarter (SW ¼) of Section 10, Township 10 South, Range 10 East, Gila and Salt River Meridian, Pinal County, Arizona. Except any portion thereof within right-of-way of Interstate 10 and the Union Pacific Railroad.

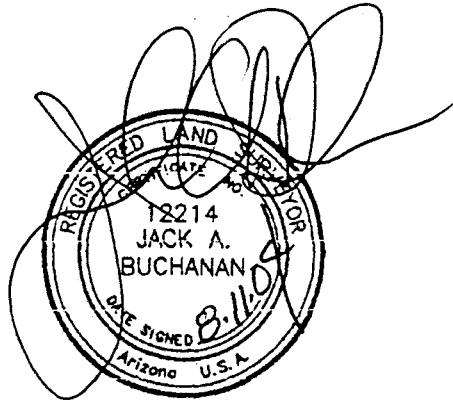
The
WLB
Group
Inc

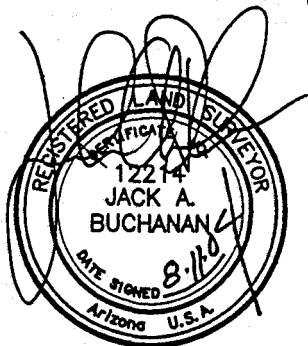
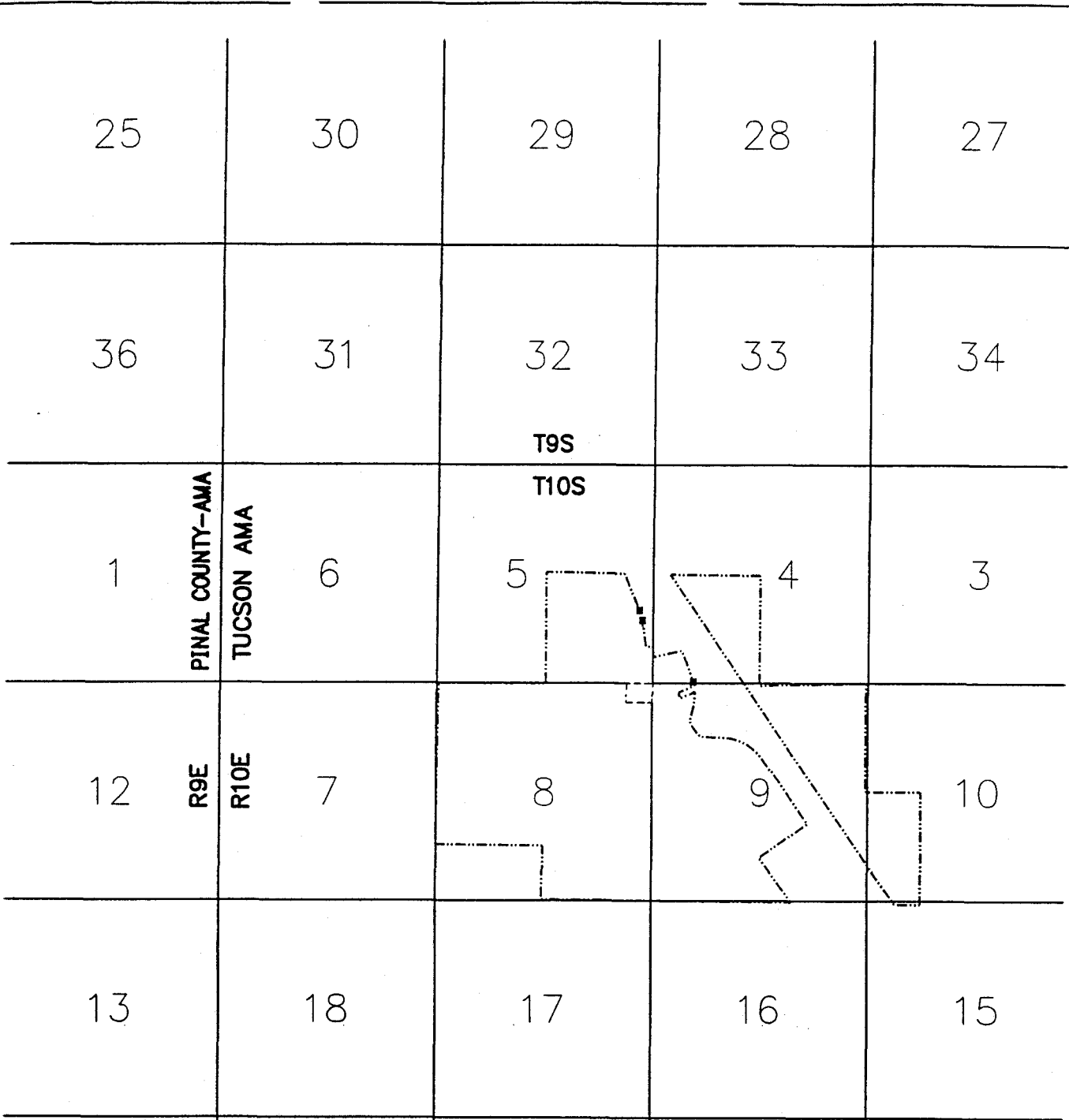
See ATTACHMENT "B" for reference.

Prepared By:

THE WLB GROUP, INC.

Jack A. Buchanan
JAB:

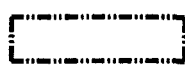




RED ROCK VILLAGE
Requested Water CC & N Area

ATTACHMENT "B"

Not to Scale



Red Rock Utilities LLC,
Requested Water CC & N Area

The
WLB
Group

WLB



WLB No. 100050-B-001



August 3, 2004
WLB No. 100050-A001-1002
W:\LEGALS\100050\CC&N Area.doc

**LEGAL DESCRIPTION
RED ROCK UTILITIES L.L.C.
WASTEWATER CC& N AREA**

The Southwest Quarter of Section 4, Township 10 South, Range 10 East, Gila and Salt River Base and Meridian, Pinal County, Arizona.

The Southeast Quarter of Section 5, Township 10 South, Range 10 East, Gila and Salt River Base and Meridian, Pinal County, Arizona,

All of Section 8, Township 10 South, Range 10 East, Gila and Salt River Base and Meridian, Pinal County, Arizona, except the South One-Half of the Southwest Quarter thereof.

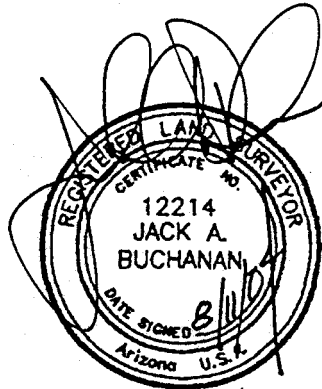
All of Section 9, Township 10 South, Range 10 East, Gila and Salt River Base and Meridian, Pinal County, Arizona.

The West one-half (W 1/2) of the Southwest Quarter (SW 1/4) of Section 10, Township 10 South, Range 10 East, Gila and Salt River Base and Meridian, Pinal County, Arizona.

See ATTACHMENT "A" for reference.

Prepared By:

THE WLB GROUP, INC.



Jack A. Buchanan
JAB:

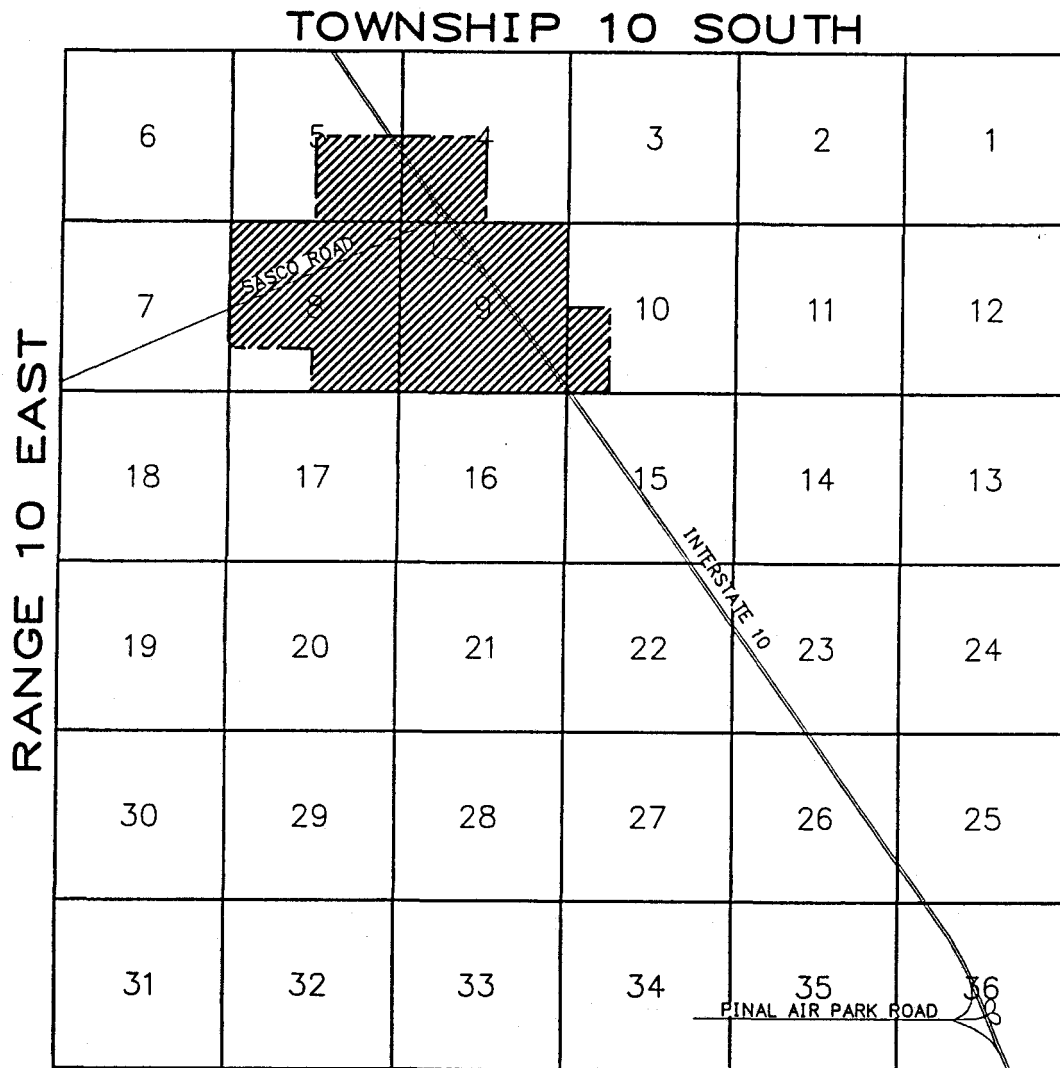
ATTACHMENT "A"

PINAL
COUNTY

4,5,8,9,10
SECTION

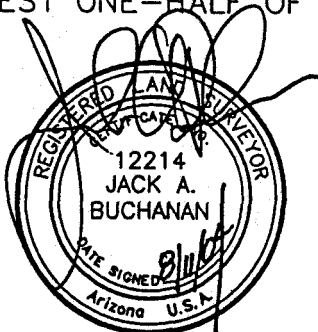
10 SOUTH
TOWNSHIP

10 EAST
RANGE



Legal Description:

SOUTHWEST QUARTER SECTION 4,
SOUTHEAST QUARTER SECTION 5,
ALL OF SECTION 8 EXCEPT THE SOUTH ONE HALF OF THE SOUTHWEST QUARTER,
ALL OF SECTION 9,
WEST ONE-HALF OF THE SOUTHWEST QUARTER OF SECTION 10



Red Rock Utilities LLC,
Requested Wastewater
CC & N Area

EXHIBIT

5

When recorded mail to:

Pinal County Board of Supervisors
P.O. Box 827
Florence, Arizona 85232



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTTLE

DATE/TIME: 03/05/04 1515
FEE: \$0.00
PAGES: 14
FEE NUMBER: 2004-016026

(The above space reserved for recording information)

CAPTION HEADING

Re-record the creation of the Red Rock Utilities, LLC water utility franchise
with the attached **corrected** page 2 of Exhibit A.

When recorded on 6/23/03, Fee No. 2003-041655, page 2 of Exhibit A (map) was incorrect.



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER

LAURA DEAN-LYTLE

DATE: 06/23/03 TIME: 1608
FEE : 0.00
PAGES: 14
FEE NO: 2003-041655

When recorded mail to:

Pinal County Board of Supervisors
P.O. Box 827
Florence, Arizona 85232

(The above space reserved for recording information)
CAPTION HEADING

Creation of the Red Rock Utilities, L.L.C. Water Utility Franchise.

When recorded mail to:

Clerk of the Board
P.O. Box 827
Florence, Arizona 85232

Creation Of The Red Rock Utilities, L.L.C. Water Franchise

WHEREAS, Red Rock Utilities, L.L.C., an Arizona limited liability company, duly authorized to conduct business in the State of Arizona, has duly filed and presented to the Board of Supervisors of the County of Pinal, State of Arizona, its application for a new public utility franchise for the purpose of constructing, operating and maintaining water lines and related appurtenances along, under and across the public streets, alleys and highways, except federal and state highways, within the unincorporated area of Pinal County, Arizona, as described in Exhibit "A" attached hereto (hereinafter "Application").

WHEREAS, upon filing of the Application for the public utility franchise, the Board of Supervisors of Pinal County ordered a public notice of its intent to consider the granting of the public utility franchise to be published in a newspaper of general circulation, in Pinal County, Arizona, stating the time and place for consideration of the Application was set for 9:30 a.m. on April 30, 2003, at the Pinal County Board of Supervisors' Hearing Room, Administration Building No. 1, Florence, Arizona.

WHEREAS, said Application having come on regularly for hearing at 9:30 a.m. on April 30, 2003; and it appearing from the affidavit of the publisher of the Florence Reminder and Blade Tribune, that due and regular notice of said time and place set for the consideration of such action has been published for at least once a week for three consecutive weeks prior to said hearing date, to-wit: in the issues of the Florence Reminder and Blade Tribune, published on April 10, 2003, April 17, 2003, and April 24, 2003; and the matter being called for hearing at 9:30 a.m., and an opportunity having been given to all interested parties to be heard.

WHEREAS, the Board of Supervisors of Pinal County has the power to create a water franchise under Arizona Revised Statute §40-283, as well as other applicable sections.

NOW, THEREFORE,

Section 1: DEFINITIONS

The following terms used in this franchise shall have the following meanings:

- A. County: Pinal County, Arizona.
- B. Board: Board of Supervisors of Pinal County, Arizona.
- C. Grantor: Pinal County, by and through its Board of Supervisors.
- D. Grantee: Red Rock Utilities, L.L.C. , an Arizona limited liability company, its successors and assigns.

E. Grantee's Facilities: Water structures, equipment, lines, plants and related appurtenances.

Section 2: GRANT

A. Grantor, on April 30, 2003, hereby grants to Grantee, for a period of twenty-five years, this new public utility franchise (hereinafter "Franchise") for the purpose of constructing, operating and maintaining water lines and related appurtenances along, under and across public streets, alleys and highways, and other rights of way, except federal and state highways, under the terms and conditions set forth herein within the unincorporated area of Pinal County, Arizona, as described in the Application (hereinafter "Franchise Area").

B. Nonexclusive Franchise.

(1) The Franchise granted hereby shall not be exclusive and shall not restrict in any manner the right of County in the exercise of any regulatory power which it now has or which may hereafter be authorized or permitted by the laws of the State of Arizona. Nothing herein shall be construed to prevent County from granting other like or similar franchises to any other person, firm or corporation. County retains and shall ever be considered as having and retaining the right and power to allow and to grant to any other person, firm, corporation or other companies, franchise rights and privileges to be exercised in and upon its public streets, alleys, highways, rights of way and public places, and such of the same and parts thereof as County may deem best or choose to allow, permit, give or grant.

(2) Nothing herein shall be construed to prevent County and its proper authorities from constructing and installing water lines, sewers, gutters, or improvements to its public highways, streets and alleys, and for that purpose, to require Grantee at Grantee's own expense to remove Grantee's Facilities to conform thereto and facilitate the same.

C. Reservation of Rights.

(1) County reserves the right to alter and amend the Franchise at any time and in any manner necessary for the safety or welfare of the public or to protect the public interests, and County reserves the right to impose at any time restrictions and limitations upon the use of the public streets, alleys, rights of way and highways as County deems best for the public safety or welfare.

(2) County expressly reserves the right, after thirty (30) days written notice to Grantee, to modify, amend, alter, change or eliminate any of the provisions of the Franchise which may become obsolete or impractical; and to impose such additional conditions upon Grantee as may be just and reasonable, such conditions to be those deemed necessary for the purpose of insuring adequate service to the public; provided however, County shall not modify, amend, alter, change or eliminate any of said provisions until after thirty (30) days and a public hearing, if such is legally required or requested by Grantee.

Section 3: RENEWAL/SUBSEQUENT APPLICATION/REMOVAL OF SYSTEM

A. The Franchise herein granted shall expire on April 30, 2028; and upon its termination, Grantee shall cease to exercise under the terms of the Franchise the privileges herein granted. In the event Grantee desires a renewal of the Franchise herein granted, or a new franchise for a subsequent period, Grantee shall apply to and open negotiations with County for that purpose at least six (6) months before the expiration of the Franchise herein granted; but nothing herein shall be construed to bind County to grant such renewal or subsequent franchise.

B. Upon termination of the Franchise, Grantee shall remove Grantee's Facilities from the streets, alleys, ways, highways, rights of way and bridges within the Franchise Area and shall restore the areas to their original condition. If such removal is not completed within six (6) months of such termination, County may deem any property not removed as having been abandoned.

Section 4: REGULATION

Grantee shall be subject to reasonable regulations for the maintenance by Grantee of such portion of the public streets, alleys, rights of way and highways altered, damaged or destroyed by Grantee, its agents, employees or contractors, in exercising the privileges granted by the Franchise, including, but not limited to provisions for repair as set forth in Section 9(B) herein.

Section 5: CONSTRUCTION, INSTALLATION AND REPAIRS

A. Before beginning any construction for installation of Grantee's Facilities, Grantee shall submit a plan of proposed construction to the Pinal County Engineer and shall not commence any construction until the plan of construction is approved by the County Engineer or his designate.

B. All work performed by Grantee, its agents, employees or contractors, under the Franchise shall be done in the manner prescribed by County and subject to the supervision of County, and in strict compliance with all laws, ordinances, rules and regulations of federal, state and local governments.

C. No construction, reconstruction, repair, or relocation under the Franchise shall be commenced until written permits have been obtained from the proper County officials. In any permit so issued, such officials may impose such conditions and regulations as a condition of the granting of the same as are necessary for the purpose of protecting any structures, highways, streets, or rights of way and for the proper restoration of such structures, highways, streets or rights of way, for the protection of the public and the continuity of pedestrian and vehicular traffic.

D. No construction under the Franchise by Grantee shall impose upon County the duty to maintain any public street, alley, highway or right of way unless County accepts said public street, alley, highway or right of way into the county maintenance system as provided by law.

Section 6: INSPECTION

County shall, if it deems it necessary, have the right to inspect the construction, operation and maintenance of Grantee's Facilities to insure the proper performance of the terms of the Franchise granted herein.

Section 7: SUFFICIENCY, LOCATION AND MAINTENANCE

All of Grantee's Facilities shall be in all respects adequate, efficient, substantial and permanent in design and workmanship, and shall be so located, erected and maintained in good order and repair so as not to interfere with the use, enjoyment or safety of the public streets, alleys, highways or rights of way.

Section 8: EXPANSION

Grantee may from time to time, during the term of the Franchise make such enlargements and extensions of its wastewater system as are necessary to adequately provide for the requirements of County and the inhabitants of the Franchise Area; provided that nothing herein shall compel Grantee to expand or enlarge its system beyond the economic and operating limits thereof. Such enlargements and extensions shall be made in accordance with County rules and regulations.

Section 9: RELOCATION; REPAIR

A. During the term of the Franchise, if County or any qualified authority having jurisdiction in the Franchise Area alters, repairs, improves, or changes the grade of, any public street, alley, highway, or right of way in the Franchise Area, then and in such event, Grantee, at its own expense, shall promptly make such changes in the location, structure or alignment of its water lines and related appurtenances as the County Engineer or his/her designee may deem necessary as provided in Section 9(B).

B. Within sixty (60) days after receiving written notice from County of needed changes or corrections in Grantee's Facilities, and upon the failure of Grantee to make such changes or corrections as set forth in Section 9(A) or to correct any damage to any public street, alley, highway or right-of-way within the Franchise Area caused directly or indirectly by Grantee, its agents, employees or contractors, County shall have the right to make, or cause such changes or corrections to be made at the expense of Grantee. In the event that any changes, corrections or repairs are deemed an emergency by County, Grantee, upon receipt of notice of such an emergency, shall make such changes, corrections or repairs deemed necessary by County to provide for health and safety concerns. In the event that Grantee does not make the necessary changes, corrections or repairs within a reasonable period of time, County may make, or cause such changes, corrections or repairs to be made at the expense of Grantee. Any expenses incurred for such changes, corrections or repairs shall be due and payable within thirty (30) days of written demand by County to Grantee.

Section 10: LIABILITY

A. If any public street, highway, alley, way, bridge, sidewalk, public place, or other public facility should be disturbed, altered, damaged or destroyed by Grantee, its agents, employees or contractors, in the construction, design, installation, operation and maintenance of Grantee's Facilities under the Franchise, the same shall be promptly repaired, reconstructed, replaced or restored by Grantee, without cost to County, as provided in Section 9(B), in as good condition as before Grantee's entry and to the satisfaction of County.

B. Grantee shall be responsible to every owner of property which shall be injured by the work of construction, installation, operation or maintenance of Grantee's Facilities under the Franchise, all physical damage which shall be done to such injured property through any act or omission of Grantee, its agents, employees or contractors, arising out of said construction, installation, operation or maintenance.

C. It is a condition of the Franchise that County shall not and does not by reason of the Franchise assume any liability of the Grantee whatsoever for injury to persons or damage to property.

Section 11: INDEMNIFICATION

Grantee by its acceptance of the Franchise agrees that throughout the entire term of this Franchise, Grantee, at its sole cost and expense, shall indemnify, defend, save and hold harmless Pinal County, its elected officers, employees and agents from any and all lawsuits, judgments and claims for injury, death and damage to persons and property, both real and personal, caused in whole or in part by the

construction, design, installation, operation or maintenance of Grantees Facilities by Grantee, its agents, employees or contractors, within the Franchise Area. Indemnified expenses shall include, but not be limited to, litigation and arbitration expenses, and attorneys' fees.

Section 12: ACCEPTANCE BY GRANTEE / EFFECTIVE DATE FRANCHISE

The Franchise shall be accepted by Grantee by written instrument in the form attached hereto as Exhibit "B" (hereinafter "Acceptance"), executed and acknowledged by it as a deed is required to be, and filed with the Clerk of the Pinal County Board of Supervisors within thirty (30) days after the date this Franchise is approved by County. This Franchise shall be effective upon delivery of the Acceptance to the Clerk of the Pinal County Board of Supervisors in the form required and within the time specified above.

Section 13: LIMITS ON GRANTEE'S RECOURSE

A. Grantee by its acceptance of the Franchise acknowledges such acceptance relies upon Grantee's own investigation and understanding of the power and authority of the County to grant this Franchise. Grantee by its acceptance of the Franchise accepts the validity of the terms and conditions of the Franchise in their entirety and agrees it will not, at any time, proceed against County in any claim or proceeding challenging any term or provision of the Franchise as unreasonable, arbitrary or void, or that County did not have the authority to impose such term or condition.

B. Grantee by accepting the Franchise acknowledges that it has not been induced to accept the same by any promise, verbal or written, by or on behalf of County or by any third person regarding any term or condition of the Franchise not expressed therein. Grantee by its acceptance of the Franchise further pledges that no promise or inducement, oral or written, has been made to any employee or official of County regarding receipt of the Franchise.

C. Grantee by its acceptance of the Franchise further acknowledges that it has carefully read the terms and conditions of the Franchise and accepts without reservation the obligations imposed by the terms and conditions herein.

D. The Board's decision concerning its selection and awarding of the Franchise shall be final.

Section 14: FAILURE TO ENFORCE FRANCHISE

Grantee shall not be excused from complying with any of the terms and conditions of the Franchise by any failure of County, upon any one or more occasions, to insist upon the Grantee's performance or to seek Grantee's compliance with any one or more of such terms or conditions.

Section 15: COMPLIANCE WITH THE LAW

Grantee shall at all times, conduct its business under the Franchise in accordance with all federal, state and local laws, rules and regulations, as amended, including any future amendments thereto as may, from time to time, be adopted.

Section 16: INTERPRETATION/GOVERNING LAW

The interpretation and performance of the Franchise and of the general terms and conditions shall be in accordance with and governed by the laws of the State of Arizona.

Section 17: VENUE

Exclusive venue for any legal action to enforce the provisions, terms and conditions of the Franchise shall be the Superior Court of the State of Arizona in and for the County of Pinal, Florence, Arizona.

Section 18: SEVERABILITY

If any section, provision, term or covenant or any portion of any section, provision, term or covenant of the Franchise is determined to be illegal, invalid or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory agency having jurisdiction thereof, such determination shall have no effect on any remaining portion of such section, provision, term or covenant or the remaining sections, provisions, terms or covenants of the Franchise, all of which shall remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

Section 19: FORFEITURE

A. If Grantee fails to comply with any of the provisions of this Franchise or defaults in any of its obligations hereunder, except for causes beyond the reasonable control of Grantee; and shall fail within thirty (30) days after written notice from County to commence, and within a reasonable time and not longer than sixty (60) days, complete the correction of such default or noncompliance, County shall have the right to revoke this Franchise and all rights of Grantee hereunder. In the event Grantee makes a general assignment or general arrangement for the benefit of creditors; or a trustee or receiver is appointed to take possession of substantially all of Grantee's Facilities within the Franchise Area or of Grantee's interest in this Franchise, where possession is not restored to Grantee within thirty (30) days; or Grantee's Facilities within the Franchise Area are subject to an attachment, execution or other seizure of substantially all of the Grantee's Facilities within the Franchise Area or this Franchise, where such seizure is not discharged within thirty (30) days, County may declare this Franchise, and any expansion hereto, forfeited and terminated.

B. Nothing herein contained shall limit or restrict any other legal rights that County may possess arising from such violations.

Section 20: REVOCATION OF FRANCHISE

The Franchise may after due notice and hearing, be revoked by County for any of the following reasons:

- A. For false or misleading statements in, or material omissions from the application for and the hearing on the granting of the Franchise.
- B. For any transfer or assignment of the Franchise or control thereof without County's written consent.
- C. For failure to comply with any of the terms and conditions of the Franchise.

Section 21: ASSIGNMENT/TRANSFER

Grantee shall not assign or transfer any interest in the Franchise without the prior written consent of Grantor. Grantor shall not unreasonably withhold its consent to a proposed transfer.

Section 22: NOTICE

Notices required under the Franchise shall be delivered or sent by certified mail, postage prepaid to:

Grantor:

Clerk of the Pinal County Board of Supervisors
P.O. Box 827
31 N. Pinal
Florence, Arizona 85232

Grantee:

Red Rock Utilities, L.L.C.
c/o Lewis and Roca LLP
One South Church, Suite 700
Tucson, AZ 85702-1611

The delivery or mailing of such notice shall be equivalent to direct personal notice and shall be deemed to have been given at the time of delivery. Either party may change its address under this section by written notice to the other party.

Section 23: REMEDIES

Rights and remedies reserved to the parties by the Franchise are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the parties may have with respect to the subject matter of the Franchise and a waiver thereof at any time shall not affect any other reservation of rights or remedies.

Section 24: RIGHT OF INTERVENTION

County hereby reserves to itself, and Grantee hereby grants to County, the right to intervene in any suit, action or proceeding involving any provision in the Franchise.

Section 25: BOOKS AND RECORDS

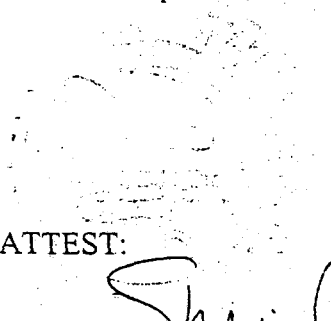
Grantee shall maintain books and records that identify all of Grantee's underground facilities by type and location within the Franchise Area. Grantee shall make such books and records available to County upon County's request and without cost to County.

Section 26: AD VALOREM TAXES

Grantee shall pay its ad valorem taxes before they become delinquent.

IN WITNESS WHEREOF, the Board of Supervisors of Pinal County, Arizona, by its Chairman and its Clerk, thereunto duly authorized, has hereunto set its hand and caused its official seal to be affixed on April 30, 2003.

PINAL COUNTY BOARD OF SUPERVISORS


Sandie Smith
Sandie Smith, Chairman

4-30-03

ATTEST:

Sheri Cluff
Sheri Cluff, Deputy Clerk of the Board

APPROVED AS TO FORM:

ROBERT CARTER OLSON
PINAL COUNTY ATTORNEY

Rick Husk
Rick Husk, Deputy County Attorney

March 27, 2003

WLB No. 100050-a001-1002

W:\LEGALS\100050\FRANCHISE Area2.doc

The
WLB
Group
INC.

**LEGAL DESCRIPTION
RED ROCK UTILITIES L.L.C.
FRANCHISE AREA**

The Southwest Quarter of Section 4, Township 10 South, Range 10 East, Gila and Salt River Base and Meridian, Pinal County, Arizona.

The Southeast Quarter of Section 5, Township 10 South, Range 10 East, Gila and Salt River Base and Meridian, Pinal County, Arizona.

All of Section 8, Township 10 South, Range 10 East, Gila and Salt River Base and Meridian, Pinal County, Arizona, except the South One-Half of the Southwest Quarter thereof.

All of Section 9, Township 10 South, Range 10 East, Gila and Salt River Base and Meridian, Pinal County, Arizona.

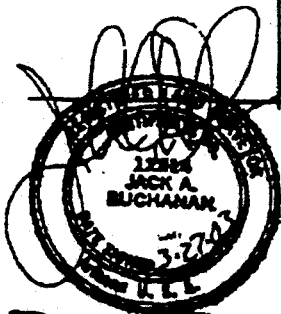
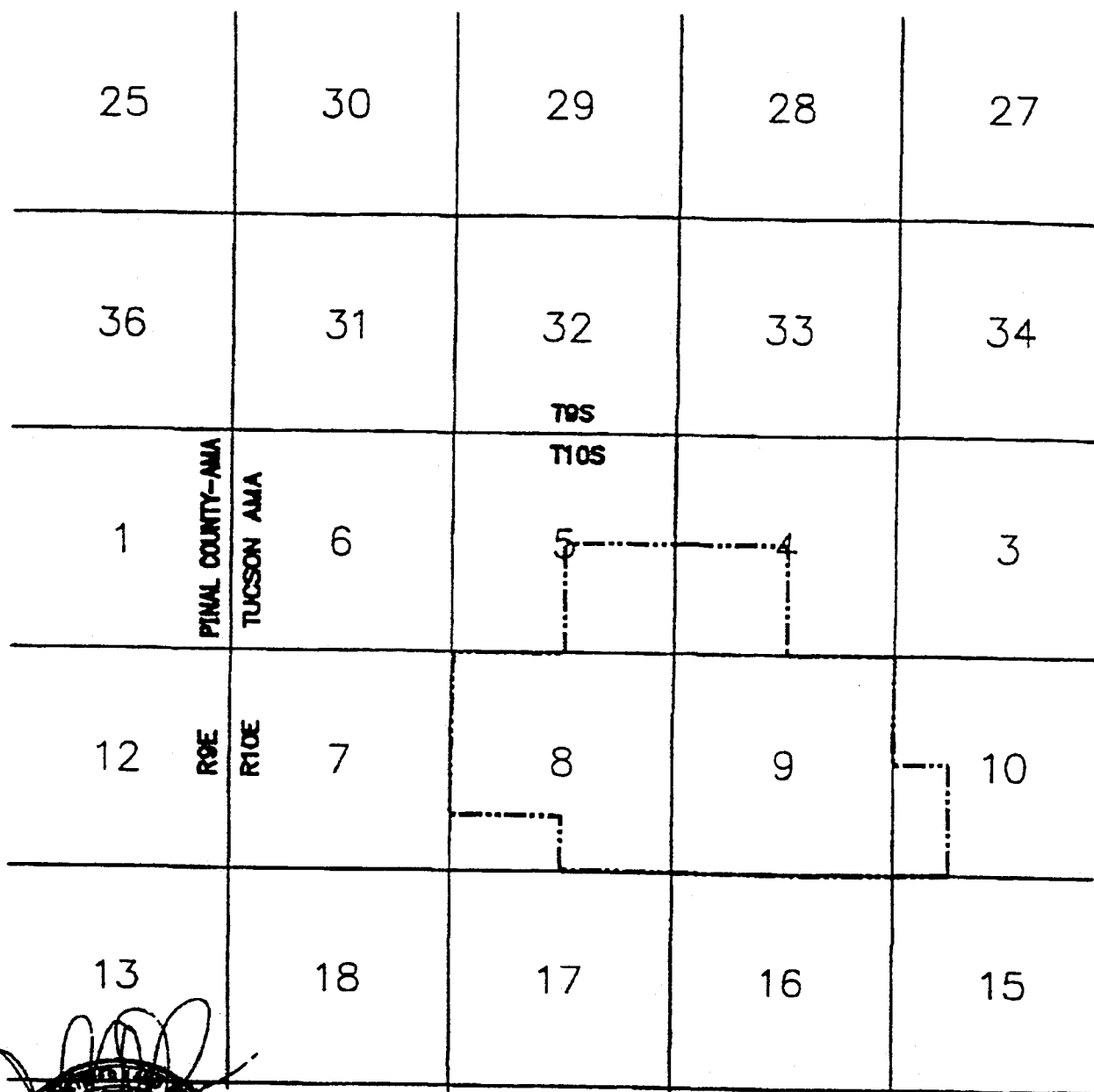
The west one-half of the Southwest Quarter (SW ¼) of Section 10, Township 10 South, Range 10 East, Gila and Salt River Base and Meridian, Pinal County, Arizona.

Prepared By:

THE WLB GROUP, INC.

Jack A. Buchanan
JAB:





RED ROCK VILLAGE
 Requested Franchise Area

Not to Scale

 Red Rock Utilities LLC,
 Requested Franchise Area

The
 WLB
 Group

WLB



Exhibit B

ACCEPTANCE OF FRANCHISE

To: Board of Supervisors Pinal County, Arizona

Grantee, Red Rock Utilities, L.L.C., an Arizona limited liability company, does hereby accept the April 30, 2003 grant of a new public utility franchise from Pinal County, Arizona, (hereinafter "Franchise"), to construct, operate, and maintain water lines and related fixtures along, under and across present and future public streets, alleys and highways, except state highways, within the unincorporated area of Pinal County, Arizona, as stated in its application for a new public utility franchise.

Grantee unconditionally accepts the Franchise and covenants to faithfully comply with, abide by, to observe and perform all the provisions, terms and conditions of the Franchise. Grantee accepts such provisions, terms and conditions and expressly waives any and all objections to the reasonableness or legality of any provisions of the same or any part thereof, or as to the legal right or authority of Pinal County to impose the same.

Grantee declares that the statements and recitals in this Franchise are correct, and Grantee declares it has made and does make the agreement, statements and admissions in this Franchise recited to have been or to be made by Grantee.

Dated this _____ day of _____, 2003.

RED ROCK UTILITIES, L.L.C.

By: _____

Title: _____

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by _____ of Red Rock Utilities, LLC, an Arizona limited liability company, and being authorized to do so, executed the foregoing instrument on behalf of the company for the purposes therein stated.

Notary Public

My Commission Expires:

EXHIBIT

6

When recorded mail to:

Pinal County Board of Supervisors
P.O. Box 827
Florence, Arizona 85232



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLE

DATE/TIME: 03/05/04 1515
FEE: \$0.00
PAGES: 13
FEE NUMBER: 2004-016025

(The above space reserved for recording information)
CAPTION HEADING

Re-recording of the creation of the Red Rock Utilities, LLC Wastewater Utility Franchise
with the attached corrected page 2 of Exhibit A.. When recorded on 6/23/03,
Fee No. 2003-041653, page 2 of Exhibit A (map) was incorrect.



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER

LAURA DEAN-LYTLÉ

When recorded mail to:

Pinal County Board of Supervisors
P.O. Box 827
Florence, Arizona 85232

DATE: 06/23/03 TIME: 1608
FEE : 0.00
PAGES: 12
FEE NO: 2003-041653

(The above space reserved for recording information)
CAPTION HEADING

Creation of Red Rock Utilities L.L.C. Wastewater Franchise.

When recorded mail to:

Clerk of the Board
P.O. Box 827
Florence, Arizona 85232

Creation Of The Red Rock Utilities, L.L.C. Wastewater Franchise

WHEREAS, Red Rock Utilities, L.L.C., an Arizona limited liability company, duly authorized to conduct business in the State of Arizona, has duly filed and presented to the Board of Supervisors of the County of Pinal, State of Arizona, its application for a new public utility franchise for the purpose of constructing, operating and maintaining wastewater lines and related appurtenances along, under and across the public streets, alleys and highways, except federal and state highways, within the unincorporated area of Pinal County, Arizona, as described in Exhibit "A" attached hereto (hereinafter "Application").

WHEREAS, upon filing of the Application for the public utility franchise, the Board of Supervisors of Pinal County ordered a public notice of its intent to consider the granting of the public utility franchise to be published in a newspaper of general circulation, in Pinal County, Arizona, stating the time and place for consideration of the Application was set for 9:30 a.m. on April 30, 2003, at the Pinal County Board of Supervisors' Hearing Room, Administration Building No. 1, Florence, Arizona.

WHEREAS, said Application having come on regularly for hearing at 9:30 a.m. on April 30, 2003; and it appearing from the affidavit of the publisher of the Florence Reminder and Blade Tribune, that due and regular notice of said time and place set for the consideration of such action has been published for at least once a week for three consecutive weeks prior to said hearing date, to-wit: in the issues of the Florence Reminder and Blade Tribune, published on April 10, 2003, April 17, 2003, and April 24, 2003; and the matter being called for hearing at 9:30 a.m., and an opportunity having been given to all interested parties to be heard.

WHEREAS, the Board of Supervisors of Pinal County has the power to create a wastewater franchise under Arizona Revised Statute §40-283, as well as other applicable sections.

NOW, THEREFORE,

Section 1: DEFINITIONS

The following terms used in this franchise shall have the following meanings:

- A. County: Pinal County, Arizona.
- B. Board: Board of Supervisors of Pinal County, Arizona.
- C. Grantor: Pinal County, by and through its Board of Supervisors.
- D. Grantee: Red Rock Utilities, L.L.C. , an Arizona limited liability company, its successors and assigns.

- E. Grantee's Facilities: Wastewater structures, equipment, lines, plants and related appurtenances.

Section 2: GRANT

A. Grantor, on April 30, 2003, hereby grants to Grantee, for a period of twenty-five years, this new public utility franchise (hereinafter "Franchise") for the purpose of constructing, operating and maintaining wastewater lines and related appurtenances along, under and across public streets, alleys and highways, and other rights of way, except federal and state highways, under the terms and conditions set forth herein within the unincorporated area of Pinal County, Arizona, as described in the Application (hereinafter "Franchise Area").

B. Nonexclusive Franchise.

(1) The Franchise granted hereby shall not be exclusive and shall not restrict in any manner the right of County in the exercise of any regulatory power which it now has or which may hereafter be authorized or permitted by the laws of the State of Arizona. Nothing herein shall be construed to prevent County from granting other like or similar franchises to any other person, firm or corporation. County retains and shall ever be considered as having and retaining the right and power to allow and to grant to any other person, firm, corporation or other companies, franchise rights and privileges to be exercised in and upon its public streets, alleys, highways, rights of way and public places, and such of the same and parts thereof as County may deem best or choose to allow, permit, give or grant.

(2) Nothing herein shall be construed to prevent County and its proper authorities from constructing and installing water lines, sewers, gutters, or improvements to its public highways, streets and alleys, and for that purpose, to require Grantee at Grantee's own expense to remove Grantee's Facilities to conform thereto and facilitate the same.

C. Reservation of Rights.

(1) County reserves the right to alter and amend the Franchise at any time and in any manner necessary for the safety or welfare of the public or to protect the public interests, and County reserves the right to impose at any time restrictions and limitations upon the use of the public streets, alleys, rights of way and highways as County deems best for the public safety or welfare.

(2) County expressly reserves the right, after thirty (30) days written notice to Grantee, to modify, amend, alter, change or eliminate any of the provisions of the Franchise which may become obsolete or impractical; and to impose such additional conditions upon Grantee as may be just and reasonable, such conditions to be those deemed necessary for the purpose of insuring adequate service to the public; provided however, County shall not modify, amend, alter, change or eliminate any of said provisions until after thirty (30) days and a public hearing, if such is legally required or requested by Grantee.

Section 3: RENEWAL/SUBSEQUENT APPLICATION/REMOVAL OF SYSTEM

A. The Franchise herein granted shall expire on April 30, 2028; and upon its termination, Grantee shall cease to exercise under the terms of the Franchise the privileges herein granted. In the event Grantee desires a renewal of the Franchise herein granted, or a new franchise for a subsequent period, Grantee shall apply to and open negotiations with County for that purpose at least six (6) months

before the expiration of the Franchise herein granted; but nothing herein shall be construed to bind County to grant such renewal or subsequent franchise.

B. Upon termination of the Franchise, Grantee shall remove Grantee's Facilities from the streets, alleys, ways, highways, rights of way and bridges within the Franchise Area and shall restore the areas to their original condition. If such removal is not completed within six (6) months of such termination, County may deem any property not removed as having been abandoned.

Section 4: REGULATION

Grantee shall be subject to reasonable regulations for the maintenance by Grantee of such portion of the public streets, alleys, rights of way and highways altered, damaged or destroyed by Grantee, its agents, employees or contractors, in exercising the privileges granted by the Franchise, including, but not limited to provisions for repair as set forth in Section 9(B) herein.

Section 5: CONSTRUCTION, INSTALLATION AND REPAIRS

A. Before beginning any construction for installation of Grantee's Facilities, Grantee shall submit a plan of proposed construction to the Pinal County Engineer and shall not commence any construction until the plan of construction is approved by the County Engineer or his designate.

B. All work performed by Grantee, its agents, employees or contractors, under the Franchise shall be done in the manner prescribed by County and subject to the supervision of County, and in strict compliance with all laws, ordinances, rules and regulations of federal, state and local governments.

C. No construction, reconstruction, repair, or relocation under the Franchise shall be commenced until written permits have been obtained from the proper County officials. In any permit so issued, such officials may impose such conditions and regulations as a condition of the granting of the same as are necessary for the purpose of protecting any structures, highways, streets, or rights of way and for the proper restoration of such structures, highways, streets or rights of way, for the protection of the public and the continuity of pedestrian and vehicular traffic.

D. No construction under the Franchise by Grantee shall impose upon County the duty to maintain any public street, alley, highway or right of way unless County accepts said public street, alley, highway or right of way into the county maintenance system as provided by law.

Section 6: INSPECTION

County shall, if it deems it necessary, have the right to inspect the construction, operation and maintenance of Grantee's Facilities to insure the proper performance of the terms of the Franchise granted herein.

Section 7: SUFFICIENCY, LOCATION AND MAINTENANCE

All of Grantee's Facilities shall be in all respects adequate, efficient, substantial and permanent in design and workmanship, and shall be so located, erected and maintained in good order and repair so as not to interfere with the use, enjoyment or safety of the public streets, alleys, highways or rights of way.

Section 8: EXPANSION

Grantee may from time to time, during the term of the Franchise make such enlargements and extensions of its wastewater system as are necessary to adequately provide for the requirements of County and the inhabitants of the Franchise Area; provided that nothing herein shall compel Grantee to expand or enlarge its system beyond the economic and operating limits thereof. Such enlargements and extensions shall be made in accordance with County rules and regulations.

Section 9: RELOCATION; REPAIR

A. During the term of the Franchise, if County or any qualified authority having jurisdiction in the Franchise Area alters, repairs, improves, or changes the grade of, any public street, alley, highway, or right of way in the Franchise Area, then and in such event, Grantee, at its own expense, shall promptly make such changes in the location, structure or alignment of its wastewater lines and related appurtenances as the County Engineer or his/her designee may deem necessary as provided in Section 9(B).

B. Within sixty (60) days after receiving written notice from County of needed changes or corrections in Grantee's Facilities, and upon the failure of Grantee to make such changes or corrections as set forth in Section 9(A) or to correct any damage to any public street, alley, highway or right-of-way within the Franchise Area caused directly or indirectly by Grantee, its agents, employees or contractors, County shall have the right to make, or cause such changes or corrections to be made at the expense of Grantee. In the event that any changes, corrections or repairs are deemed an emergency by County, Grantee, upon receipt of notice of such an emergency, shall make such changes, corrections or repairs deemed necessary by County to provide for health and safety concerns. In the event that Grantee does not make the necessary changes, corrections or repairs within a reasonable period of time, County may make, or cause such changes, corrections or repairs to be made at the expense of Grantee. Any expenses incurred for such changes, corrections or repairs shall be due and payable within thirty (30) days of written demand by County to Grantee.

Section 10: LIABILITY

A. If any public street, highway, alley, way, bridge, sidewalk, public place, or other public facility should be disturbed, altered, damaged or destroyed by Grantee, its agents, employees or contractors, in the construction, design, installation, operation and maintenance of Grantee's Facilities under the Franchise, the same shall be promptly repaired, reconstructed, replaced or restored by Grantee, without cost to County, as provided in Section 9(B), in as good condition as before Grantee's entry and to the satisfaction of County.

B. Grantee shall be responsible to every owner of property which shall be injured by the work of construction, installation, operation or maintenance of Grantee's Facilities under the Franchise, all physical damage which shall be done to such injured property through any act or omission of Grantee, its agents, employees or contractors, arising out of said construction, installation, operation or maintenance.

C. It is a condition of the Franchise that County shall not and does not by reason of the Franchise assume any liability of the Grantee whatsoever for injury to persons or damage to property.

Section 11: INDEMNIFICATION

Grantee by its acceptance of the Franchise agrees that throughout the entire term of this Franchise, Grantee, at its sole cost and expense, shall indemnify, defend, save and hold harmless Pinal County,

its elected officers, employees and agents from any and all lawsuits, judgments and claims for injury, death and damage to persons and property, both real and personal, caused in whole or in part by the construction, design, installation, operation or maintenance of Grantees Facilities by Grantee, its agents, employees or contractors, within the Franchise Area. Indemnified expenses shall include, but not be limited to, litigation and arbitration expenses, and attorneys' fees.

Section 12: ACCEPTANCE BY GRANTEE / EFFECTIVE DATE FRANCHISE

The Franchise shall be accepted by Grantee by written instrument in the form attached hereto as Exhibit "B" (hereinafter "Acceptance"), executed and acknowledged by it as a deed is required to be, and filed with the Clerk of the Pinal County Board of Supervisors within thirty (30) days after the date this Franchise is approved by County. This Franchise shall be effective upon delivery of the Acceptance to the Clerk of the Pinal County Board of Supervisors in the form required and within the time specified above.

Section 13: LIMITS ON GRANTEE'S RECOURSE

A. Grantee by its acceptance of the Franchise acknowledges such acceptance relies upon Grantee's own investigation and understanding of the power and authority of the County to grant this Franchise. Grantee by its acceptance of the Franchise accepts the validity of the terms and conditions of the Franchise in their entirety and agrees it will not, at any time, proceed against County in any claim or proceeding challenging any term or provision of the Franchise as unreasonable, arbitrary or void, or that County did not have the authority to impose such term or condition.

B. Grantee by accepting the Franchise acknowledges that it has not been induced to accept the same by any promise, verbal or written, by or on behalf of County or by any third person regarding any term or condition of the Franchise not expressed therein. Grantee by its acceptance of the Franchise further pledges that no promise or inducement, oral or written, has been made to any employee or official of County regarding receipt of the Franchise.

C. Grantee by its acceptance of the Franchise further acknowledges that it has carefully read the terms and conditions of the Franchise and accepts without reservation the obligations imposed by the terms and conditions herein.

D. The Board's decision concerning its selection and awarding of the Franchise shall be final.

Section 14: FAILURE TO ENFORCE FRANCHISE

Grantee shall not be excused from complying with any of the terms and conditions of the Franchise by any failure of County, upon any one or more occasions, to insist upon the Grantee's performance or to seek Grantee's compliance with any one or more of such terms or conditions.

Section 15: COMPLIANCE WITH THE LAW

Grantee shall at all times, conduct its business under the Franchise in accordance with all federal, state and local laws, rules and regulations, as amended, including any future amendments thereto as may, from time to time, be adopted.

Section 16: INTERPRETATION/GOVERNING LAW

Red Rock Utilities, L.L.C. Wastewater Franchise

The interpretation and performance of the Franchise and of the general terms and conditions shall be in accordance with and governed by the laws of the State of Arizona.

Section 17: VENUE

Exclusive venue for any legal action to enforce the provisions, terms and conditions of the Franchise shall be the Superior Court of the State of Arizona in and for the County of Pinal, Florence, Arizona.

Section 18: SEVERABILITY

If any section, provision, term or covenant or any portion of any section, provision, term or covenant of the Franchise is determined to be illegal, invalid or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory agency having jurisdiction thereof, such determination shall have no effect on any remaining portion of such section, provision, term or covenant or the remaining sections, provisions, terms or covenants of the Franchise, all of which shall remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

Section 19: FORFEITURE

A. If Grantee fails to comply with any of the provisions of this Franchise or defaults in any of its obligations hereunder, except for causes beyond the reasonable control of Grantee; and shall fail within thirty (30) days after written notice from County to commence, and within a reasonable time and not longer than sixty (60) days, complete the correction of such default or noncompliance, County shall have the right to revoke this Franchise and all rights of Grantee hereunder. In the event Grantee makes a general assignment or general arrangement for the benefit of creditors; or a trustee or receiver is appointed to take possession of substantially all of Grantee's Facilities within the Franchise Area or of Grantee's interest in this Franchise, where possession is not restored to Grantee within thirty (30) days; or Grantee's Facilities within the Franchise Area are subject to an attachment, execution or other seizure of substantially all of the Grantee's Facilities within the Franchise Area or this Franchise, where such seizure is not discharged within thirty (30) days, County may declare this Franchise, and any expansion hereto, forfeited and terminated.

B. Nothing herein contained shall limit or restrict any other legal rights that County may possess arising from such violations.

Section 20: REVOCATION OF FRANCHISE

The Franchise may after due notice and hearing, be revoked by County for any of the following reasons:

- A. For false or misleading statements in, or material omissions from the application for and the hearing on the granting of the Franchise.
- B. For any transfer or assignment of the Franchise or control thereof without County's written consent.
- C. For failure to comply with any of the terms and conditions of the Franchise.

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31 N. Pinal
Florence, Arizona 85232

Grantee:

Red Rock Utilities, L.L.C.
c/o Lewis and Roca LLP
One South Church, Suite 700
Tucson, AZ 85702-1611

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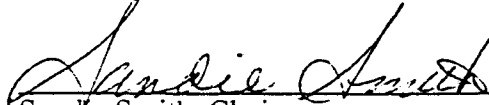
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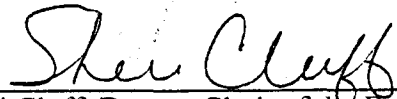
Grantee shall pay its ad valorem taxes before they become delinquent.

IN WITNESS WHEREOF, the Board of Supervisors of Pinal County, Arizona, by its Chairman and its Clerk, thereunto duly authorized, has hereunto set its hand and caused its official seal to be affixed on April 30, 2003.

PINAL COUNTY BOARD OF SUPERVISORS


Sandie Smith, Chairman 4-30-03

ATTEST:


Sheri Cluff, Deputy Clerk of the Board

APPROVED AS TO FORM:

ROBERT CARTER OLSON
PINAL COUNTY ATTORNEY


Rick Husk, Deputy County Attorney

March 27, 2003
WLB No. 100050-a001-1002
W:\LEGALS\100050\FRANCHISE Area2.doc

The
WLB
Group, Inc.

**LEGAL DESCRIPTION
RED ROCK UTILITIES L.L.C.
FRANCHISE AREA**

The Southwest Quarter of Section 4, Township 10 South, Range 10 East, Gila and Salt River Base and Meridian, Pinal County, Arizona.

The Southeast Quarter of Section 5, Township 10 South, Range 10 East, Gila and Salt River Base and Meridian, Pinal County, Arizona.

All of Section 8, Township 10 South, Range 10 East, Gila and Salt River Base and Meridian, Pinal County, Arizona, except the South One-Half of the Southwest Quarter thereof.

All of Section 9, Township 10 South, Range 10 East, Gila and Salt River Base and Meridian, Pinal County, Arizona.

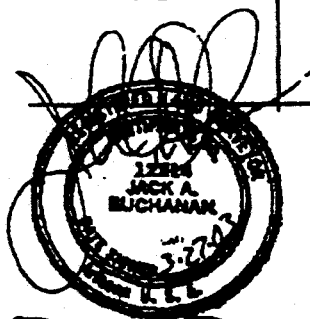
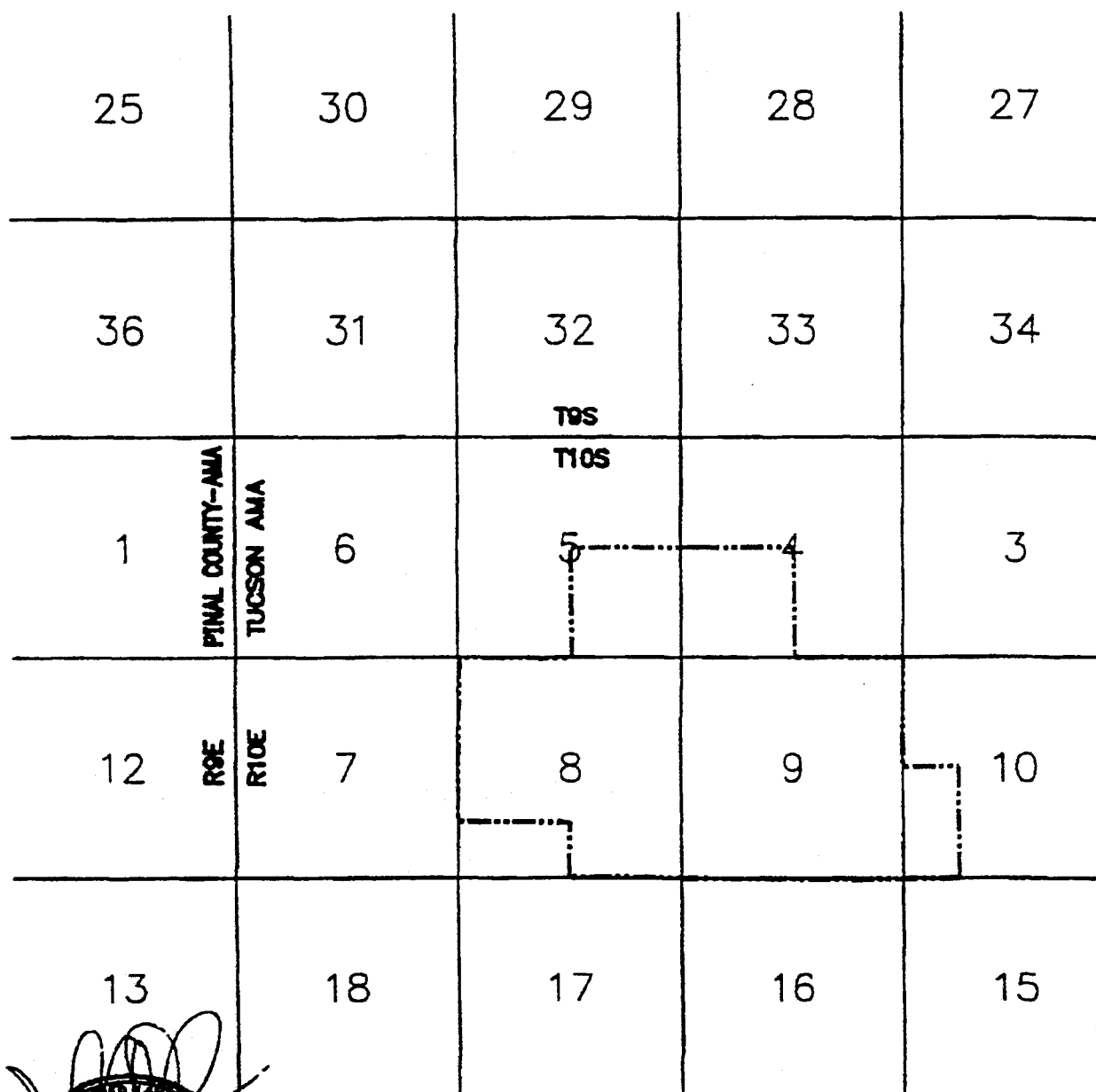
The west one-half of the Southwest Quarter (SW ¼) of Section 10, Township 10 South, Range 10 East, Gila and Salt River Base and Meridian, Pinal County, Arizona.

Prepared By:

THE WLB GROUP, INC.

Jack A. Buchanan
JAB:





RED ROCK VILLAGE
Requested Franchise Area

Not to Scale

Red Rock Utilities LLC,
 Requested Franchise Area

The
 WLB
 Group

WLB



WLB SA 10000-0-001

Map prepared by Jack A. Buchanan, Notary Public, State of Arizona, Commission Expires 3-27-03

Exhibit B

ACCEPTANCE OF FRANCHISE

To: Board of Supervisors Pinal County, Arizona

Grantee, Red Rock Utilities, L.L.C., an Arizona limited liability company, does hereby accept the April 30, 2003 grant of a new public utility franchise from Pinal County, Arizona, (hereinafter "Franchise"), to construct, operate, and maintain wastewater lines and related fixtures along, under and across present and future public streets, alleys and highways, except state highways, within the unincorporated area of Pinal County, Arizona, as stated in its application for a new public utility franchise.

Grantee unconditionally accepts the Franchise and covenants to faithfully comply with, abide by, to observe and perform all the provisions, terms and conditions of the Franchise. Grantee accepts such provisions, terms and conditions and expressly waives any and all objections to the reasonableness or legality of any provisions of the same or any part thereof, or as to the legal right or authority of Pinal County to impose the same.

Grantee declares that the statements and recitals in this Franchise are correct, and Grantee declares it has made and does make the agreement, statements and admissions in this Franchise recited to have been or to be made by Grantee.

Dated this _____ day of _____, 2003.

RED ROCK UTILITIES, L.L.C.

By: _____

Title: _____

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by _____, _____ of Red Rock Utilities, LLC, an Arizona limited liability company, and being authorized to do so, executed the foregoing instrument on behalf of the company for the purposes therein stated.

Notary Public

My Commission Expires:
